

ARKANSAS CODE OF 1987 ANNOTATED



Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

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PREFACE

The 2012-2013 Advance Code Service keeps the Arkansas Code of 1987 Annotated as current as possible by providing notes to cases and law reviews, and updated table and index entries, as well as other pertinent information, in the interim period between the publication of Supplements to the Code. Each Advance Code Service pamphlet is cumulative and may be recycled or discarded upon receipt of the next pamphlet.

Material in the Advance Code Service follows the structure of the Arkansas Code of 1987 Annotated and should be used in conjunction with the Code and its 2011 Supplement. A stylistic change has been made to the note analyses but the content is the same.

This pamphlet contains updates to the legislation enacted by the Arkansas General Assembly at the 2011 Regular Session and the 2012 Fiscal Session.

Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2013 Ark. LEXIS 40 (January 31, 2013) and 2013 Ark. App. LEXIS 69 (January 30, 2013).

Federal Supplement through November 5, 2012.

Federal Reporter 3d Series through December 6, 2012.

United States Supreme Court Reports through November 5, 2012.

Bankruptcy Reporter through December 3, 2012.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 74, p. 549.

ALR Fed. 2d through Volume 64, p. 255.

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TITLE 1

GENERAL PROVISIONS

CHAPTER 2

THE CODE AND REGULATIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

1-2-115. Code classification and organization not to be construed — Notes, headings, etc., not part of law.

CASE NOTES

Separate Subchapters Not Determinative

Fact that the Code Revision Commission placed the statutes pertaining to cable-television companies in a separate subchapter during the codification process did not mean that the intangible personal property of cable-television companies

was not subject to ad-valorem assessment and taxation under § 26-26-1606(b). *Falcon Cable Media LP v. Ark. PSC*, 2012 Ark. 463, — S.W.3d —, 2012 Ark. LEXIS 501 (Dec. 13, 2012).

Cited: *McMillan v. Live Nation Entm't, Inc.*, 2012 Ark. 166, — S.W.3d — (2012).

SUBCHAPTER 3 — ARKANSAS CODE REVISION COMMISSION

1-2-303. Powers and duties.

CASE NOTES

Authority to Change the Code

Intangible personal property of a cable television company, including franchise agreements, customer relationships, and good will, was subject to ad-valorem assessment and taxation under § 26-26-1606(b). The words “this subchapter” in § 26-26-1606 should be read to mean “this

act,” as they did prior to changes by the Arkansas Code Revision Commission, and therefore included all companies subject to taxation by the Arkansas Public Service Commission. *Falcon Cable Media LP v. Ark. PSC*, 2012 Ark. 463, — S.W.3d —, 2012 Ark. LEXIS 501 (Dec. 13, 2012).

CHAPTER 5

HOLIDAYS AND OBSERVANCES

1-5-107. Confederate Flag Day.

RESEARCH REFERENCES

ALR. Propriety of Prohibition of Display or Wearing of Confederate Flag. 66 A.L.R.6th 493.

TITLE 2

AGRICULTURE

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CHAPTER.

35. MARKETING, SALE, AND TRANSPORTATION.

SUBTITLE 3. LIVESTOCK

CHAPTER 35

MARKETING, SALE, AND TRANSPORTATION

SUBCHAPTER.

3. ARKANSAS BEEF COUNCIL.

SUBCHAPTER 3 — ARKANSAS BEEF COUNCIL

SECTION.

2-35-303. Creation — Members — Organization.

2-35-303. Creation — Members — Organization.

(a) The Arkansas Beef Council is created.

(b)(1) The council shall be composed of seven (7) members appointed by the Governor and confirmed by the Senate as follows:

(A) Three (3) cattle producer members shall represent the Arkansas Farm Bureau Federation and shall be appointed from a list of names submitted by the board of directors of that organization;

(B) Three (3) cattle producer members shall represent the Arkansas Cattlemen's Association and shall be appointed from a list of names submitted by the board of directors of that organization; and

(C) One (1) member shall be an active Arkansas livestock market operator who shall be appointed from the state at large.

(2) Each year, not less than thirty (30) days prior to the expiration of the terms of the current council members whose terms expire in that

year, the organizations named shall submit to the Governor two (2) nominees for each position to be filled on the council from the respective organizations. The Governor shall appoint a succeeding member to the council from each organization's list of nominees.

(3) Each member selected shall serve for a term of three (3) years and until his or her successor is duly selected as provided in this section.

(4) Vacancies in any unexpired term shall be filled by the Governor for the remainder of the unexpired term. The member appointed to fill the vacancy shall represent the same organization as the person whose term is unexpired.

(c) Members of the council shall meet and organize immediately after their appointment and shall elect a chair, a vice chair, and a secretary-treasurer from the membership of the council whose duties shall be those customarily exercised by those officers or specifically designated by the council.

(d) The council may establish rules and regulations for its own government and for the administration of the affairs of the council.

History. Acts 1983, No. 160, § 2; A.S.A. 1947, § 78-1902.

Publisher's Notes. This section is being set out to reflect a correction in (b)(1).

TITLE 3

ALCOHOLIC BEVERAGES

CHAPTER.

5. BEER AND WINE — MANUFACTURE, SALE, AND TRANSPORTATION GENERALLY.
9. ON-PREMISES CONSUMPTION.

CHAPTER 5

BEER AND WINE — MANUFACTURE, SALE, AND TRANSPORTATION GENERALLY

SUBCHAPTER.

11. BEER — WHOLESALERS AND SUPPLIERS.

SUBCHAPTER 11 — BEER — WHOLESALERS AND SUPPLIERS

SECTION.

- 3-5-1102. Definitions.

3-5-1102. Definitions.

(a) The following words or phrases, or the plural thereof, whenever they appear in this subchapter shall have, unless the context clearly requires otherwise, the meanings ascribed to them in this section:

(1) "Agreement" means any agreement between a wholesaler and a supplier, whether oral or written, whereby a wholesaler is granted the right to purchase and sell a brand or brands of beer sold by a supplier;

(2) "Ancillary business" means:

(A) A business owned by the wholesaler, by a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler the primary business of which is directly related to the transporting, storing, or marketing of the brand or brands of beer of a supplier with whom the wholesaler has an agreement; or

(B) A business owned by a wholesaler, a substantial stockholder of a wholesaler, or a substantial partner of a wholesaler which recycles empty beverage containers of the supplier;

(3) "Beer" includes light wine and shall carry the same definitions as set forth in § 3-5-202(3) and (4);

(4) "Designated member" means and includes:

(A) The spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest, including a controlling interest, in a wholesaler;

(B) Any person who inherits under the deceased individual's will or under the laws of intestate succession of this state;

(C) Any person or entity which has through a valid testamentary device by the deceased individual succeeded the deceased individual's ownership interest in the wholesaler pursuant to a written contract or instrument which has been previously approved by a supplier;

(D) The appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a wholesaler; and

(E) The person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an ownership interest in a wholesaler;

(5) "Director" means the Director of the Alcoholic Beverage Control Division;

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, as defined in and interpreted under the Uniform Commercial Code, § 4-1-201;

(7) "Reasonable qualifications" means the standard of the reasonable criteria established and consistently used by the respective supplier for similarly situated wholesalers that entered into, continued, or renewed an agreement with the supplier during a period of twenty-four (24) months prior to the proposed transfer of the wholesaler's business, or for similarly situated wholesalers who have changed managers or designated managers during a period of twenty-four (24) months prior to the proposed change in the manager or successor manager of the wholesaler's business;

(8) "Retaliatory action" means the refusal to continue an agreement, or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith;

(9) “Sales territory” means an area of exclusive sales responsibility for the brand or brands of beer sold by a supplier as designated by an agreement;

(10) “Similarly situated wholesalers” means wholesalers of a supplier that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, as well as reasonably similar economic and geographic conditions;

(11) “Substantial stockholder or substantial partner” means a stockholder of or partner in the wholesaler who owns an interest of ten percent (10%) or more of the partnership or of the capital stock of a corporate wholesaler;

(12)(A) “Supplier” means a manufacturer or importer of beer and light wine brands as registered with the director.

(B) “Supplier” does not include a small brewery under the Arkansas Native Brewery Act, § 3-5-1401 et seq.;

(13) “Transfer of wholesaler’s business” means the voluntary sale, assignment, or other transfer of ten percent (10%) or more or control of the business or all or substantially all of the assets of the wholesaler, or ten percent (10%) or more or control of the capital stock of the wholesaler, including, without limitation, the sale or other transfer of capital stock or assets by merger, consolidation, or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler; and

(14) “Wholesaler” means a wholesaler of beer and light wine as licensed by the Alcoholic Beverage Control Board and as defined in § 3-5-202(10).

(b) Other words and phrases used in this subchapter shall have the meanings ascribed to them in §§ 3-1-102 and 3-5-202, as amended, and any acts amendatory thereof, supplementary thereto, or substituted therefor unless the context clearly requires otherwise.

History. Acts 1991, No. 8, § 2; 1991, No. 866, § 2; 2011, No. 982, § 1.

Publisher’s Notes. This section is being set out to reflect a correction to the 2011 supplement.

Amendments. The 2011 amendment inserted present (a)(12)(B).

CHAPTER 8

LOCAL OPTION

SUBCHAPTER 3 — PROCEEDINGS PURSUANT TO 1935 ACT

3-8-306. Certificate of election results.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests. 60 A.L.R.6th 481.

3-8-309. Contests of elections.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests. 60 A.L.R.6th 481.

CHAPTER 9

ON-PREMISES CONSUMPTION

SUBCHAPTER.

2. ALCOHOLIC BEVERAGES GENERALLY.

SUBCHAPTER 2 — ALCOHOLIC BEVERAGES GENERALLY

SECTION.

3-9-202. Definitions.

3-9-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Alcoholic beverages" means all intoxicating liquors of any sort, other than beer and wine as described and regulated in §§ 3-5-301 — 3-5-307, and 3-9-301 et seq., respectively;

(2) "Bed and breakfast private club" means a corporation, partnership, individual, or limited liability corporation whose primary function is to provide overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business owner or not, where the owner or a person representing the owner lives on the premises, where a breakfast meal is served to the lodging guest, and where no restaurant on the premises is open to the public except for the lodging guest;

(3) "Board" means the Alcoholic Beverage Control Board of this state, or its successor agency;

(4) "City" means any city of the first class or city of the second class in this state;

(5) "Director" means the Director of the Alcoholic Beverage Control Division;

(6) "Dry area" means any area in which the manufacture or sale of intoxicating liquor is prohibited by a local option election heretofore or hereafter held pursuant to the Initiated Act;

(7) "Hotel" means every building or other structure commonly referred to as a hotel, motel, motor hotel, motor lodge, or by similar name, which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers or guests, whether transient, permanent, or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests, and having one (1) or more public dining rooms with adequate and sanitary kitchen facilities, and a seating capacity for at least fifty (50) persons, where meals are regularly served to such guests, such sleeping accommodations and dining room being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation;

(8) "Initiated Act" means Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, which establishes the procedure for local option elections to prohibit the manufacture or sale of intoxicating liquor;

(9) "Large event facility" means a facility that houses convention center activity, tourism activity, trade show and product display and related meeting activity, or any other similar large meeting or attendance activity and that either itself or through one (1) or more independent contractors complies with all of the following:

(A) Serves full and complete meals and food on the premises;

(B) Has one (1) or more places for food service on the premises with a seating capacity for not fewer than five hundred (500) people; and

(C) Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people;

(10) "On-premises consumption" means the sale of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold;

(11) "Person" means any natural person, partnership, association, or corporation;

(12)(A)(i) "Private club" means a nonprofit corporation organized and existing under the laws of this state, no part of the net revenues of which shall inure directly or indirectly to the benefit of any of its members or any other individual, except for the payment of bona fide expenses of the club's operations, and which is conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other nonprofit object or purpose other than the consumption of alcoholic beverages.

(ii) The nonprofit corporation shall have been in existence for a period of not less than one (1) year before applying for a permit, as prescribed in this subchapter.

(iii) At the time of application for the permit, the nonprofit corporation must have not fewer than one hundred (100) members and at the time of application must own or lease, be the holder of a buy-sell agreement or offer and acceptance, or have an option to lease a building, property, or space therein for the reasonable comfort and accommodation of its members and their families and guests and restrict the use of club facilities to those persons.

(B) For purposes of this subdivision (12), a person shall be required to become a member of the private club in any wet area of the state only upon ordering an alcoholic beverage as defined under subdivision (1) of this section.

(C) Furthermore, where the business entity that holds a private club permit additionally holds a retail beer permit, retail wine for consumption on the premises permit, or cafe or restaurant wine permit, the hours of operation authorized for the private club shall likewise apply to all permits of the business entity;

(13) "Referendum election" means an election held as provided in this subchapter, at which the electors of a city or county shall vote on the question of authorizing, as provided herein, the sale of alcoholic beverages for on-premises consumption in those areas of the city or county in which the lawful sale of alcoholic beverages has not been prohibited by a local option election held pursuant to the Initiated Act; and

(14) "Restaurant" means any public or private place:

(A)(i) Kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place where complete meals are served and where complete meals are actually and regularly served, without sleeping accommodations, such a place being provided with adequate and sanitary kitchen and dining equipment and a seating capacity of at least fifty (50) people and having employed therein a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests or members.

(ii) At least one (1) meal per day shall be served, and the place shall be open a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating; or

(B)(i) Which qualifies as a "large meeting or attendance facility", which is defined, without limitation, as a facility housing convention center activity, tourism activity, trade show and product display and related meeting activity, or any other similar large meeting or attendance activity and which either itself or through one (1) or more independent contractors complies with all of the following:

(a) Actually serves full and complete meals and food on the premises;

(b) Has one (1) or more places for food service on the premises with a seating capacity for not fewer than five hundred (500) people;

(c) Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people; and

(d) Serves alcoholic beverages on the premises at one (1) or more places only on days that meals and food are served at one (1) or more places on the premises.

(ii)(a) Any on-premises restaurant permittee as licensed by subdivision (14)(A) of this section and any hotel or motel on-premises permittee as licensed by subdivision (7) of this section shall be allowed to serve alcoholic beverages purchased under its permit at any large meeting or attendance facility which is licensed under this subdivision (14)(B). Hotel, motel, and restaurant permittees may serve alcoholic beverages purchased under their permits only when they have first secured written permission from the permittee of the large meeting or attendance facility. Otherwise, alcoholic beverage service at the large meeting or attendance facility shall be from inventory purchased by the large meeting or attendance facility permittee.

(b) Written permission shall not be granted for more than a five-day period. The Alcoholic Beverage Control Division shall be given a copy of any such written agreement. Any violations which occur while such permission is being used shall lie against the hotel, motel, or restaurant using such permission.

(c) Any hotel, motel, or restaurant that serves its alcoholic beverages at a large meeting or attendance facility shall only do so pursuant to a satellite catering permit to be issued by the division for an annual fee of five hundred dollars (\$500) per fiscal year or part thereof. The permit shall be applied for on forms as prescribed by the board.

(d) The board shall promulgate such regulations as it deems necessary to implement subdivisions (14)(B)(ii)(a)-(c) of this section.

(iii) When a large attendance facilities permit has been issued to a government-owned facility located in a county that has a population of more than one hundred fifty-five thousand (155,000) according to the 2000 Federal Decennial Census, Arkansas-licensed beer wholesalers shall be allowed to pay for advertising devices used at the government-owned facility. Such advertising devices shall include items such as inside or outside signs, scoreboards, programs, scorecards, and the like. Provided, if such advertising by the beer wholesaler results in the formation or existence of an exclusive buying arrangement by the large attendance facilities permittee and the wholesaler who furnishes such items, then such an exclusive buying arrangement will be a violation of the large attendance facilities permit and the wholesale beer permit involved even if the arrangements are caused by third parties. To the extent that § 3-5-214 or any other law could be interpreted to preclude such advertising arrangements allowed in this subdivision (14)(B)(iii), they are held inapplicable.

(iv)(a) When a large attendance facilities permit has been issued to a facility owned or operated by the owner of a professional sports team franchised by Minor League Baseball and within a county that has a population of more than one hundred fifty-five thousand (155,000) according to the 2000 Federal Decennial Census, the operator of the facility may accept sponsorship funds, advertising items, or promotional items from licensed beer wholesalers. Promotional items shall include items used by the facility to promote attendance.

(b) However, if the use of sponsorship funds, advertising items, or promotional items by the beer wholesaler results in the formation or existence of an exclusive buying arrangement by the large attendance facilities permittee and the wholesaler who furnishes the sponsorship funds, advertising items, or promotional items, then the exclusive buying arrangement will be a violation of the large attendance facilities permit and the wholesaler's wholesale beer permit even if the arrangements are caused by third parties.

(c) Section 3-5-214 or any other law that could be interpreted to preclude arrangements to use the sponsorship funds, advertising items, or promotional items allowed in this subdivision (14)(B)(iv) shall not apply to this subdivision (14)(B)(iv).

History. Acts 1969, No. 132, § 2; 1985, No. 384, § 1; A.S.A. 1947, § 48-1402; Acts 1989, No. 295, § 3; 1989, No. 837, § 1; 1989, No. 953, § 1; 1993, No. 403, § 2; 1995, No. 536, § 2; 1995, No. 600, § 1; 1999, No. 1063, § 1; 1999, No. 1371, § 1; 1999, No. 1597, § 1; 2003, No. 369, § 1;

2003, No. 1813, § 1; 2005, No. 445, § 1; 2007, No. 642, § 1; 2011, No. 1194, § 2.

Publisher's Notes. This section is being set out to reflect a correction in (14)(B)(ii)(a) in the 2011 supplement.

Amendments. The 2011 amendment added present (9).

CASE NOTES

Private Clubs.

Approval of a private-club permit was proper because a club established that it had a nonprofit purpose other than the consumption of alcohol under subdivision (12)(A)(i) of this section where it operated in conjunction with a restaurant and was designed to enhance the dining experience. Moreover, the Arkansas Alcoholic

Beverage Control Division Board's interpretation of subdivision (12)(A)(i) was entitled to deference, and arguments relating to nonprofit status that were not fully developed before the Board were not preserved for appellate review. *Barnes v. Ark. Dep't of Fin. & Admin.*, 2012 Ark. App. 237, — S.W.3d — (2012).

TITLE 4**BUSINESS AND COMMERCIAL LAW*****SUBTITLE 1. UNIFORM COMMERCIAL CODE*****CHAPTER 2****SALES****PART 2 — FORM, FORMATION, AND READJUSTMENT OF CONTRACT****4-2-201. Formal requirements — Statute of frauds.****CASE NOTES****Enforceable Contract.**

Trial court erred under subdivision (3)(c) of this section in finding that no valid contract existed between a buyer and a machine seller because there was a meeting of the minds as to the basic terms

of the contract; there were competent parties, subject matter, consideration, agreement, and mutual obligation. *Bowen v. Gardner*, 2013 Ark. App. 52, — S.W.3d —, 2013 Ark. App. LEXIS 69 (Jan. 30, 2013).

PART 3 — GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT**4-2-302. Unconscionable contract or clause.****CASE NOTES****Contract Not Unconscionable.**

Grant of summary judgment in favor of a corporation in its action against the personal guaranty was proper, in part because the guaranty's mere conclusory allegations that the guaranty was unconscionable were insufficient for the court to

have found it void and unenforceable under subdivision (1) of this section. He offered no proof to the circuit court that the guaranty was unconscionable. *Welsh v. Mid-South Bulk Servs.*, 2011 Ark. App. 728, — S.W.3d — (2011).

PART 7 — REMEDIES**4-2-703. Seller's remedies in general.****CASE NOTES****Damages.**

Trial court did not err holding that a buyer was entitled to the return of \$ 15,454 in a breach of contract action against a shaving mill seller; because the seller spent \$ 10,406 in additional expenses to make the machine salable to

another purchaser under subsection (d) of this section after the buyer declined to purchase it, that amount was properly subtracted from the buyer's \$ 25,860 down payment. *Bowen v. Gardner*, 2013 Ark. App. 52, — S.W.3d —, 2013 Ark. App. LEXIS 69 (Jan. 30, 2013).

4-2-706. Seller's resale including contract for resale.**CASE NOTES****Damages.**

Trial court did not err holding that a buyer was entitled to the return of \$ 15,454 in a breach of contract action against a shaving mill seller; because the seller spent \$ 10,406 in additional expenses to make the machine salable to

another purchaser after the buyer declined to purchase it, that amount was properly subtracted from the buyer's \$ 25,860 down payment pursuant to subsection (1) of this section. *Bowen v. Gardner*, 2013 Ark. App. 52, — S.W.3d —, 2013 Ark. App. LEXIS 69 (Jan. 30, 2013).

4-2-708. Seller's damages for non-acceptance or repudiation.**CASE NOTES****Measure of Damages.**

Where a buyer repudiated a concrete supply contract, the seller was properly denied damages as a lost volume seller because testimony from the seller's general manager showed that the seller was not a lost volume seller since it would

have had a limited capacity to perform other contracts if the buyer had not breached the contract upon learning that the concrete was substandard. *Razorback Concrete Co. v. Dement Constr. Co., LLC*, 688 F.3d 346 (8th Cir. 2012).

4-2-725. Statute of limitations in contracts for sale.**CASE NOTES****ANALYSIS**

Applicability.
Claim Barred.

Applicability.

Appellants' warrant claims were barred by the limitations period of the Arkansas Product Liability Act, § 16-116-103, instead of the limitations period of the Uniform Commercial Code in this section, because a claim for the costs of repairing the buses with corroded flooring would be a claim for property damage within the meaning of the Act, § 16-116-102(5). *IC Corp. v. Hoover Treated Wood Prods.*, 2011 Ark. App. 589, — S.W.3d — (2011).

Court of appeals did not need to decide whether appellants' claims for "economic loss" were covered by this section, the Uniform Commercial Code, instead of the Arkansas Product Liability Act, § 16-116-103, because appellants failed to plead or present evidence as to its lost profits or lost goodwill, matters that had to be specifically pled under Ark. R. Civ. P. 9(g). *IC*

Corp. v. Hoover Treated Wood Prods., 2011 Ark. App. 589, — S.W.3d — (2011).

Even if the court interpreted the buyer's limited promotional duty as creating a "mixed" contract for the sale of goods and services, the agreement was fundamentally one for the sale of goods, and the Uniform Commercial Code governed; therefore, the four-year statute of limitations applied to the supplier's breach of contract claim. *B & B Hardware, Inc. v. Fastenal Co.*, — F.3d —, 2012 U.S. App. LEXIS 17540 (8th Cir. Aug. 21, 2012).

Claim Barred.

Statute of limitations began to run no later than June 2005, when the supplier alleged that the buyer failed to perform as required by the agreement; because the complaint was filed on May 3, 2010, well more than four years after the alleged breach in June 2005, the statute of limitations barred the breach-of-contract claim. *B & B Hardware, Inc. v. Fastenal Co.*, — F.3d —, 2012 U.S. App. LEXIS 17540 (8th Cir. Aug. 21, 2012).

CHAPTER 3

NEGOTIABLE INSTRUMENTS

PART 1 — GENERAL PROVISIONS AND DEFINITIONS

4-3-115. Incomplete instrument.

CASE NOTES

Authority.

Trial court properly determined that a decedent's companion did not convert the decedent's funds when she deposited a check into her account, as the decedent's estate failed to show that the check, which was an incomplete instrument under sub-

sections (a) and (d) of this section, was completed without authority; as the change was deemed authorized, the check was not an altered instrument under § 4-3-407(a). *Hankins v. Austin*, 2012 Ark. App. 641, — S.W.3d —, 2012 Ark. App. LEXIS 743 (Nov. 7, 2012).

PART 4 — LIABILITY OF PARTIES

4-3-407. Alteration.

CASE NOTES

Validity Between Parties.

Trial court properly determined that a decedent's companion did not convert the decedent's funds when she deposited a check into her account, as the decedent's estate failed to show that the check, which was an incomplete instrument under § 4-

3-115(a) and (d), was completed without authority; as the change was deemed authorized, the check was not an altered instrument under subsection (a) of this section. *Hankins v. Austin*, 2012 Ark. App. 641, — S.W.3d —, 2012 Ark. App. LEXIS 743 (Nov. 7, 2012).

CHAPTER 4A

FUNDS TRANSFERS

PART 1 — SUBJECT MATTER AND DEFINITIONS

4-4A-101. Short title.

RESEARCH REFERENCES

ALR. Construction and Application to Immediate Parties of Uniform Commercial Code Article 4A Governing Funds Transfers. 62 A.L.R.6th 1.

Effect of Uniform Commercial Code Ar-

ticle 4A on Attachment, Garnishment, Forfeiture or Other Third-Party Process Against Funds Transfers. 66 A.L.R.6th 567.

4-4A-102. Subject matter.**RESEARCH REFERENCES**

ALR. Construction and Application to Immediate Parties of Uniform Commercial Code Article 4A Governing Funds Transfers. 62 A.L.R.6th 1.
Effect of Uniform Commercial Code Ar-

ticle 4A on Attachment, Garnishment, Forfeiture or Other Third-Party Process Against Funds Transfers. 66 A.L.R.6th 567.

CHAPTER 8**INVESTMENT SECURITIES****PART 1 — SHORT TITLE AND GENERAL MATTERS****4-8-107. Whether indorsement, instruction, or entitlement order is effective.****CASE NOTES****Elements of Claim.**

Because a breach of contract, in and of itself, was not tortious, the supplier had no cognizable tortious interference or Ar-

kansas Deceptive Trade Practices Act claims. *B & B Hardware, Inc. v. Fastenal Co.*, — F.3d —, 2012 U.S. App. LEXIS 17540 (8th Cir. Aug. 21, 2012).

CHAPTER 9**SECURED TRANSACTIONS****PART 1 — GENERAL PROVISIONS****SUBPART 1****SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS**

4-9-101. Short title.**RESEARCH REFERENCES**

ALR. Consignment Transactions Under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R.6th 289.

4-9-102. Definitions and index of definitions.**RESEARCH REFERENCES**

ALR. Consignment Transactions Under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R.6th 289.

4-9-103. Purchase-money security interest — Application of payments — Burden of establishing.**RESEARCH REFERENCES**

ALR. Consignment Transactions Under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R.6th 289.

SUBPART 2**APPLICABILITY OF CHAPTER**

4-9-109. Scope.**RESEARCH REFERENCES**

ALR. Consignment Transactions Under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R.6th 289.

PART 2 — EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT**SUBPART 1****EFFECTIVENESS AND ATTACHMENT**

4-9-203. Attachment and enforceability of security interest — Proceeds — Supporting obligations — Formal requisites.**CASE NOTES****Rights in Collateral.**

Bank's lien in stock pledged by bankruptcy debtors as security for loans was unperfected since the debtors conditionally relinquished their transfer rights, and thus the security interest could not

attach to those rights and, without attachment, perfection could not be accomplished. *Timberland Bancshares, Inc. v. Garrison (In re Lee)*, — B.R. —, 2011 Bankr. LEXIS 4387 (Bankr. W.D. Ark. Nov. 16, 2011).

4-9-204. After-acquired property — Future advances.**CASE NOTES****After-Acquired Collateral.**

Plan proposed by Chapter 12 debtors which treated three security agreements they entered with a creditor separately by eliminating provisions in the agreements that provided cross-collateralization violated 11 U.S.C.S. § 1225(a)(5), and could not be confirmed. Although 11 U.S.C.S. § 1222(b)(2) authorized the debtors to

modify the rights of holders of secured claims through their bankruptcy plan. that authorization was limited to modifications that complied with § 1225, and § 1225(a)(5)(B)(i)'s lien-retention requirement encompassed cross-collateralized property. In re Heath, 483 Bankr. 708, 2012 Bankr. LEXIS 5620 (Bankr. E.D. Ark. July 3, 2012).

PART 5 — FILING**SUBPART 1****FILING OFFICE — CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT****4-9-513. Termination statement.****RESEARCH REFERENCES**

ALR. Consignment Transactions Under Uniform Commercial Code Article 9 on Secured Transactions. 58 A.L.R.6th 289.

SUBTITLE 3. CORPORATIONS AND ASSOCIATIONS**CHAPTER 27****BUSINESS CORPORATION ACT OF 1987****SUBCHAPTER 2 — INCORPORATION****4-27-204. Liability for preincorporation transactions.****CASE NOTES****Transfers.**

This section did not support the company's argument that the warranty deed transferred the property to the individual as the business's principal, because the statute did not address the transfer of real

property to people purporting to act on behalf of a corporation, while knowing that the corporation did not exist. Buckeye Ret. Co., LLC v. Walter, 2012 Ark. App. 257, — S.W.3d — (2012).

SUBCHAPTER 6 — SHARES AND DISTRIBUTIONS

PART B: ISSUANCE OF SHARES

4-27-622. Liability of shareholders.

CASE NOTES

Shareholder Not Liable.

Because the television network failed to allege any facts that would make the communications company liable for the broadcasting company's obligations under an intellectual property agreement, the

district court properly dismissed the television network's claim against the communications company. *Retro TV Network, Inc. v. Luken Communs., LLC*, — F.3d —, 2012 U.S. App. LEXIS 21569 (8th Cir. Oct. 17, 2012).

SUBCHAPTER 15 — FOREIGN CORPORATIONS

PART A: CERTIFICATE OF AUTHORITY

4-27-1501. Authority to transact business required.

CASE NOTES

ANALYSIS

In General.
Mortgages.

In General.

Arkansas Statutory Foreclosure Act in § 18-50-102(a)(2) provides that a bank may be authorized to do business in Arkansas either by state or federal law; the Wingo Act, § 4-27-1501 et seq., specifies that a foreign corporation may obtain authority to transact business in Arkansas by obtaining a certificate from the Arkansas Secretary of State; and the Arkansas banking statutes provide that in some instances an out-of-state bank must ob-

tain a certificate from the Arkansas Bank Commissioner. *JPMorgan Chase Bank, N.A. v. Johnson*, 470 B.R. 829 (Bankr. E.D. Ark. 2012).

Mortgages.

Section 18-50-117 required nonresident mortgagee to be authorized to do business in Arkansas, and noncompliance was not cured by an attorney-in-fact under § 18-50-102, not superseded by § 4-27-101 et seq., and not preempted by 12 U.S.C.S. § 24 and 371 of the National Banking Act. Attorney's fees were awarded under § 16-22-308. In *re Johnson*, 460 B.R. 234 (Bankr. E.D. Ark. 2011).

CHAPTER 29

PROFESSIONAL CORPORATIONS

SUBCHAPTER 3 — MEDICAL CORPORATION ACT

4-29-309. Certificate of registration — Issuance, renewal, etc.

CASE NOTES

Board Members As Government Officers

Defendant was properly given a six-level sentencing enhancement for the bombing and arson charges because the doctor/victim was an official victim under U.S. Sentencing Guidelines Manual § 3A1.2(a), in that the doctor was a mem-

ber of a state medical board, was targeted by defendant for his participation on the board, and under this section, the board had been assigned its powers by the state legislature. *United States v. Mann*, 701 F.3d 274, 2012 U.S. App. LEXIS 24995 (8th Cir. Dec. 6, 2012).

CHAPTER 32

SMALL BUSINESS ENTITY TAX PASS THROUGH ACT

SUBCHAPTER 3 — RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH THE LIMITED LIABILITY COMPANY

4-32-301. Agency power of members and managers.

CASE NOTES

Liability.

Debtor's judgment debt for breach of fiduciary duty was dischargeable because the fiduciary duty found by the state court and this section did not involve the same standards as 11 U.S.C.S. § 523(a)(4) and the creditors' business assets consisting of

people, relationships, and efforts did not constitute a "definable res" for purposes of § 523(a)(4). *Clear Sky Props. LLC v. Roussel (In re Roussel)*, 483 Bankr. 915, 2012 Bankr. LEXIS 5590 (Bankr. E.D. Ark. Dec. 3, 2012).

4-32-304. Liability of members to third parties.

CASE NOTES

Fraud.

Generally, the owner or agent of a limited liability company is not liable for the debts of that company under this section; however, the protections afforded to a limited liability company do not shield the owner or agent from liability for conduct that would justify a finding of fraud against that person individually. Under

Arkansas law, a cause of action for fraud requires proof of five elements: (1) a false representation of material fact; (2) knowledge that the representation is false or that there is insufficient evidence upon which to make the representation; (3) intent to induce action or inaction in reliance upon the representation; (4) justifiable reliance on the representation; and

(5) damage suffered as a result of the reliance. *Myers v. Dewese* (In re Dewese), 469 B.R. 314 (Bankr. E.D. Ark. 2012).

SUBTITLE 4. PARTNERSHIPS

CHAPTER 46

UNIFORM PARTNERSHIP ACT (1996)

SUBCHAPTER 1 — GENERAL PROVISIONS

4-46-101. Definitions.

RESEARCH REFERENCES

ALR. Construction and Application of Revised Uniform Partnership Act. 70 A.L.R.6th 209.

SUBCHAPTER 2 — NATURE OF PARTNERSHIP

4-46-202. Formation of partnership.

CASE NOTES

Joint Venture.

Grain, collateral for a creditor's loan, belonged to debtors' estate and not the debtors' joint venture because the joint venture was not a separate legal entity. There was no evidence the joint venture was registered as a separate entity with

Secretary of State's office, and there was no evidence the joint venture created separate balance sheets or inventories. *Rice v. Carlton Farms, LLC* (In re Webb), — B.R. —, 2012 Bankr. LEXIS 3382 (Bankr. E.D. Ark. July 3, 2012).

SUBTITLE 5. CONTRACTS, NOTES, AND OTHER COMMERCIAL INSTRUMENTS

CHAPTER 58

ASSIGNMENTS

4-58-105. Completion of assignments — Rights and remedies of debtor and subsequent assignees.

CASE NOTES

Relationship to Other Laws.

Subdivision (b)(2) of this section simply prescribed the legal effect when a party to an assigned account in good faith paid the assignor rather than the unknown assignee; the mere use of the word "trustee,"

when viewed in the context of the statute as a whole, did not reflect a legislative intent to create the kind of express or technical trust required in the strict and narrow sense under 11 U.S.C.S. § 523(a)(4), and therefore, the \$65,000

debt was not nondischargeable under 11 U.S.C.S. § 523(a)(4). *Arvest Mortg. Co. v. Nail (In re Nail)*, 680 F.3d 1036 (8th Cir. 2012).

Assignment provision in the mortgage documents merely served as a collection device for miscellaneous proceeds (funds owned by debtor that she was contractually obligated to remit to the mortgage

company); thus, even if the settlement proceeds from the builder were miscellaneous proceeds, debtor's alleged failure to comply with the assignment provision was a dischargeable breach of contract, not a nondischargeable embezzlement. *Arvest Mortg. Co. v. Nail (In re Nail)*, 680 F.3d 1036 (8th Cir. 2012).

CHAPTER 59

FRAUD

SUBCHAPTER 2 — FRAUDULENT TRANSFERS

4-59-204. Transfers fraudulent as to present and future creditors.

RESEARCH REFERENCES

ALR. Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

4-59-205. Transfers fraudulent as to present creditors.

RESEARCH REFERENCES

ALR. Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

SUBTITLE 6. BUSINESS PRACTICES

CHAPTER 71

TRADEMARKS AND LABELS

SUBCHAPTER 2 — REGISTRATION AND PROTECTION

4-71-209. Cancellation.

RESEARCH REFERENCES

ALR. Application of Defense of Laches in Action to Cancel Trademark. 64 A.L.R. Fed. 2d 255.

4-71-212. Infringement.**RESEARCH REFERENCES**

ALR. Validity, Construction, and Application of State Trademark Counterfeiting Statutes. 63 A.L.R.6th 303.

SUBTITLE 7. CONSUMER PROTECTION**CHAPTER 88****DECEPTIVE TRADE PRACTICES****SUBCHAPTER 1 — GENERAL PROVISIONS****4-88-101. Applicability of chapter.****CASE NOTES****Practice of Law.**

Because a law firm and its attorneys were attorneys engaged in the practice of law at the time of their alleged collection of amounts in excess of those set forth in § 4-60-103 by a holder of a dishonored check, the Arkansas Deceptive Trade

Practices Act (ADTPA), §§ 4-88-101 to 4-88-804, had no applicability to their actions. The law firm was engaged in the practice of law by engaging in settlement negotiations for its clients. *Bennett & Deloney, P.C. v. State Ex Rel. McDaniel*, 2012 Ark. 119, — S.W.3d — (2012).

4-88-107. Deceptive and unconscionable trade practices generally.**CASE NOTES****Scope.**

In *Preston v. Stoops*, 373 Ark. 591, 285 S.W.3d 606, 2008 Ark. LEXIS 397 (2008), the Arkansas Supreme Court dismissed the client's claim against the attorney because it found that the Arkansas Deceptive Trade Practices Act (ADTPA), § 4-88-101 et seq., did not apply to the practice of law; the basis for this holding was that the Arkansas General Assembly did not have

the authority to create a law that would control the practice of law. However, that same protective rationale did not apply to the creditor here; it was a separate entity apart from the firm it hired to collect the debt, and Preston did not shield it from debtor's ADTPA cause of action. *Humes v. LVNV Funding, L.L.C.* (In re Humes), — B.R. —, 2011 Bankr. LEXIS 4857 (Bankr. E.D. Ark. Dec. 20, 2011).

CHAPTER 90
AUTOMOBILES

SUBCHAPTER 2 — ODOMETER REGULATIONS

4-90-204. Preventing tampering.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies. 66 A.L.R.6th 351.

Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute. 67 A.L.R.6th 209.

4-90-206. Disclosure requirements on transfer of a motor vehicle.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies. 66 A.L.R.6th 351.

Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute. 67 A.L.R.6th 209.

TITLE 5
CRIMINAL OFFENSES

SUBTITLE 4. OFFENSES AGAINST PROPERTY

CHAPTER.

38. DAMAGE OR DESTRUCTION OF PROPERTY.

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

5-1-102. Definitions.

CASE NOTES

ANALYSIS

Physical Injury.

Possess.

Serious Physical Injury.

Physical Injury.

Revocation of defendant's suspended imposition of sentence for two felony convictions was appropriate because the circuit court's finding that she committed third-degree domestic battering and thus violated the condition that she break no laws, was not clearly against the preponderance of the evidence. The testimony was sufficient to prove that, either purposefully or recklessly, she struck her nephew and caused him physical injury in the form of substantial pain under § 5-26-305(a) and subdivision (14) of this section. *Westbrook v. State*, 2011 Ark. App. 615, — S.W.3d — (2011).

Possess.

Evidence that there was a funnel, plastic tubing, coffee filters, camp fuel, sy-

ringes, gloves, a metal spoon, a smoking device, a bag of ammonia nitrate, and a pill crusher in the master bedroom of defendant's home, along with a burn barrel in the back yard, was sufficient to support a conviction for possession of paraphernalia with intent to manufacture. *Gowen v. State*, 2011 Ark. App. 761, — S.W.3d — (2011).

Serious Physical Injury.

Defendant's conviction for aggravated assault was proper because there was evidence that defendant's conduct created a substantial risk of serious physical injury, as defined in subdivision (21) of this section; defendant hit the victim with the butt of a pistol with sufficient force to knock the victim down, breaking facial bones and causing the victim's eye to swell shut. *Pitts v. State*, 2012 Ark. App. 228, — S.W.3d — (2012).

5-1-109. Statute of limitations.

CASE NOTES

Commencement of Prosecution.

Subdivision (c)(1) of this section permitted prosecution of defendant for thefts of property that occurred outside the three-year statute of limitations because defendant committed fraud by using her position handling the payroll for her employer to steal tens of thousands of dollars and

the fraud was discovered less than one year before the criminal proceedings were initiated. *Leek v. State*, 2012 Ark. App. 699, — S.W.3d —, 2012 Ark. App. LEXIS 828 (Dec. 12, 2012).

Cited: *Clark v. State*, 2012 Ark. App. 496, — S.W.3d — (2012).

5-1-110. Conduct constituting more than one offense — Prosecution.**CASE NOTES****ANALYSIS**

Lesser Included Offenses.
Multiple Convictions.

Lesser Included Offenses.

Sexual indecency with a child was not a lesser included offense of sexual assault in the first degree, as sexual indecency with a child required solicitation, which was not required for sexual assault in the first degree, and sexual assault in the first degree required that the sexual conduct occur but not that the defendant solicit the conduct. Sexual indecency with a child requires proof that the victim was less than fifteen years old, whereas sexual assault in the first degree only requires that the victim was less than eighteen years old. *Halliday v. State*, 2011 Ark. App. 544, — S.W.3d — (2011).

In a case in which a jury convicted defendant of capital murder in the shooting death of his ex-wife, the trial court properly refused to instruct the jury on reckless manslaughter and negligent homicide. Defendant, who fired once into a residence, mortally striking his ex-wife in the back, offered no rational basis to support giving either instruction on the basis that his actions were reckless or negligent. *Jones v. State*, 2012 Ark. 38, — S.W.3d — (2012).

In a criminal trial, the circuit court did not abuse its discretion in denying defendant's request to instruct the jury that second-degree sexual assault under § 5-14-125(a)(3) was a lesser offense included in rape of a person less than fourteen years of age, as defined in § 5-14-103(a)(3)(A), because the offense contained two elements not included in rape: defendant's age and marital status. Therefore, second-degree sexual assault was not a lesser offense included in rape under the tests set forth in subsection (b) of this section. *Webb v. State*, 2012 Ark. 64, — S.W.3d — (2012).

Defense counsel was not ineffective for not objecting that defendants' convictions violated double jeopardy under subsection (b) of this section because possession of

drug paraphernalia with intent to manufacture methamphetamine was not a lesser-included offense of manufacturing methamphetamine, in violation of § 5-64-101(m). *Myers v. State*, 2012 Ark. 143, — S.W.3d — (2012).

Appellant sentenced to 540 months' incarceration for manufacturing a controlled substance, two counts of possession of drug paraphernalia with the intent to manufacture methamphetamine, and failure to appear was not entitled to proceed with an appeal of the decision denying his petition for writ of habeas corpus. The trial court was not without jurisdiction to accept appellant's guilty plea for the charges of possession of drug paraphernalia with intent to manufacture methamphetamine, as it was not a lesser-included offense of manufacturing methamphetamine for purposes of subsection (b) of this section because the offenses do not share the same elements; a conviction for manufacturing methamphetamine requires the State to prove that a defendant is engaged in the production, preparation, propagation, compounding, conversion, or processing of methamphetamine, whereas possession of drug paraphernalia with intent to manufacture methamphetamine requires no such proof. *McHaney v. Hobbs*, 2012 Ark. 361, — S.W.3d — (2012).

Jury instruction on the lesser-included offense of attempted aggravated robbery was not warranted because there was no evidence of the offense of attempt under § 5-3-201(a)(2); when appellant stormed out of a retail store's stockroom brandishing a gun and pointing it employees, he actually completed the offense of aggravated robbery. *Thomas v. State*, 2012 Ark. App. 466, — S.W.3d — (2012).

Multiple Convictions.

Trial court did not err in determining that consecutive sentencing for aggravated robbery, § 5-12-103(a)(1), first-degree terroristic threatening, § 5-13-301(a)(1)(A), and second-degree battery, § 5-13-202(a)(2), did not violate the prohibition against double jeopardy in Ark. Const. Art. 2, § 8 and the Fifth Amend-

ment because neither first-degree terroristic threatening nor second-degree battery was a lesser-included offense of aggravated robbery since both crimes required proof of additional facts not required by aggravated robbery; the offense of first-degree terroristic threatening re-

quires the elements of threatening to cause the death of the victim and the purpose of terrorizing the victim, and a conviction for second-degree battery requires proof of purposely causing physical injury to the victim. *Walker v. State*, 2012 Ark. App. 61, — S.W.3d — (2012).

5-1-112. Affirmative defense — Former prosecution for same offense.

CASE NOTES

Overruling Necessity.

State did not prove an overriding necessity to end a prior trial under subdivision (3) of this section to prevent a dismissal on double jeopardy grounds as a witness exceeded the trial judge's order not to tell

the jury what conclusion to reach in the prior trial, but the testimony did not tell the jury what conclusion to reach; the judge's admonition cured any error or prejudice. *Everetts v. State*, 2011 Ark. App. 629, — S.W.3d — (2011).

CHAPTER 2
PRINCIPLES OF CRIMINAL LIABILITY

SUBCHAPTER 2 — CULPABILITY

5-2-202. Culpable mental states — Definitions.

CASE NOTES

ANALYSIS

Instructions.
Knowingly.
Negligently.
Purposely.
Recklessly.

Instructions.

In a case in which a jury convicted defendant of capital murder in the shooting death of his ex-wife, the trial court properly refused to instruct the jury on reckless manslaughter and negligent homicide. Defendant, who fired once into a residence, mortally striking his ex-wife in the back, offered no rational basis to support giving either instruction on the basis that his actions were reckless or negligent. *Jones v. State*, 2012 Ark. 38, — S.W.3d — (2012).

Knowingly.

Appellant's conviction for second-degree murder was affirmed because the pattern of the gunshots, which were aimed at the

victim's chest and upper-arm area, as well as the trajectory of the bullets showed that appellant acted deliberately in a manner that would naturally and probably culminate in the victim's death. *Phillips v. State*, 2011 Ark. App. 575, — S.W.3d — (2011).

Defendant's conviction for second-degree battery, in violation of § 5-13-202(a)(4)(C), was supported by the evidence because the number of bruises on his girlfriend's 23-month-old son and the unusual force necessary to cause them, as testified to by an emergency room pediatrician, provided proof that he knowingly caused physical injury under subdivision (2)(B) of this section. *Hahn v. State*, 2012 Ark. App. 297, — S.W.3d — (2012).

Negligently.

Because there was no negligent behavior on the part of defendant pursuant to subsection (4) of this section, his action were purposeful, and a firearm and tool-mark examiner for the Arkansas State Crime Lab testified that for the gun to be

fired, the trigger had to be pulled, which usually required five to five and a half pounds of pressure, the trial court did not err in refusing to give the jury an instruction on negligent homicide under § 5-10-105(b)(1). *Ratterree v. State*, 2012 Ark. App. 701, — S.W.3d —, 2012 Ark. App. LEXIS 821 (Dec. 12, 2012).

Purposely.

During a trial for breaking or entering, the jury was not required to believe defendant's claim that defendant did not enter a vehicle with the intent to steal anything under subdivision (1) of this section, but instead to have a place to sleep; defendant's argument overlooked the fact that an officer found a car-stereo faceplate in defendant's pocket. *Pruitt v. State*, 2011 Ark. App. 754, — S.W.3d — (2011).

Substantial evidence supported a finding that defendant acted purposely, within the meaning of subdivision (1) of this section, when he discharged a gun in the direction of a step that was three steps down from where the assault victim was standing. Defendant's explanation of the gun accidentally firing did not match the physical evidence of bullet fragments found near a pock mark on the first step to the front porch and both the victim and defendant being wounded. *Montalvo v. State*, 2012 Ark. App. 119, — S.W.3d — (2012).

Evidence was sufficient to convict defendant of first-degree murder under § 5-10-102(a)(2) because the three gunshot wounds to the victim alone, at least two of which were fired 35-40 seconds apart, ran counter to defendant's accidental shooting theory; and the evidence supported an inference of purposeful intent under subdivision (1) of this section. *Smith v. State*, 2012 Ark. App. 359, — S.W.3d — (2012).

Evidence was sufficient to sustain defendant's attempted first-degree murder conviction because defendant knocked on a door and fired a gun at the victim when he opened the door. The jury could reasonably have inferred that defendant purposely engaged in conduct that constituted a substantial step in a course of conduct known to cause death to another person, regardless of that person's identity. *Wells v. State*, 2012 Ark. App. 596, — S.W.3d —, 2012 Ark. App. LEXIS 718 (Oct. 24, 2012).

Recklessly.

During defendant's trial for permitting the abuse of her minor child, the court did not err in allowing defendant's mother to testify regarding her reaction to the child's injuries; the testimony was relevant as to whether defendant recklessly failed to take action to prevent the abuse under subdivision (3) of this section. *Sullivan v. State*, 2012 Ark. 74, — S.W.3d — (2012).

5-2-203. Culpable mental states — Interpretation of statutes.

CASE NOTES

Legislative Intent.

In a first-degree felony murder case, the Supreme Court rejected defendant's contention that it erred in deciding *Perry v. State* and *Hill v. State* by failing to apply subsection (b) of this section. Contrary to defendant's suggestion that its decisions

ignored the legislature's mandate stated in subsection (b), the Supreme Court's felony-murder jurisprudence was in concert with the legislature's intent. *Holian v. State*, 2013 Ark. 7, — S.W.3d —, 2013 Ark. LEXIS 11 (Jan. 17, 2013).

5-2-205. Causation.

CASE NOTES

Death.

Defendant's conviction for capital murder under subdivision (a)(4) of this section was proper because the circuit court did not err in denying his motion for a di-

rected verdict. Defendant's stabbing of the victim brought about the officers' use of deadly force that killed the victim; had defendant not been stabbing her, the officers would not have attempted to end

defendant's attack on her by using deadly force. *Anderson v. State*, 2011 Ark. 461, — S.W.3d — (2011).

5-2-209. Entrapment.

CASE NOTES

ANALYSIS

Admission of Crime.
Evidence.

Admission of Crime.

Defendant, who was convicted for internet stalking, should have been permitted to plead entrapment under this section as an affirmative defense while at the same time denying one or two elements of the crime, and therefore defendant's conviction was reversed, because the doctrine requiring a defendant to admit to all the elements of a crime in order to plead entrapment could result in punishment upon a defendant who was merely entrapped; the doctrine could possibly pun-

ish a defendant for a serious crime for merely seeking to require the state to prove its case aside from offering an affirmative defense. *Smoak v. State*, 2011 Ark. 529, — S.W.3d — (2011).

Evidence.

Denial of appellant's, an inmate's, petition for writ of certiorari was improper because the evidence at issue presented a jury question concerning whether the informant had induced the commission of the offense, and the jury was given an instruction on the affirmative defense of entrapment. Thus, the inmate failed to prove that he received the ineffective assistance of counsel. *Lowe v. State*, 2012 Ark. 185, — S.W.3d — (2012).

SUBCHAPTER 3 — MENTAL DISEASE OR DEFECT

5-2-305. Mental health examination of defendant.

CASE NOTES

ANALYSIS

Compliance with Section.
Examination Report.

Compliance with Section.

Defendant's conviction for breaking or entering was proper because the trial court did not err in failing to suspend the proceedings sua sponte and order a second competency hearing based on his actions shortly before and during trial. In part, although defendant appeared to have required restraint at trial because he would stand at inappropriate times, and he asserted that he did not understand the proceedings, those behaviors were entirely consistent with those observed during the videotaped interview following his

arrest, after which defendant underwent a psychological examination. *Vilayvanh v. State*, 2012 Ark. App. 561, — S.W.3d — (2012).

Examination Report.

Denial of the inmate's petition for post-conviction relief under Ark. R. Crim. P. 37.1 was improper as to the competency issue because the supreme court was unable to determine whether there were any results of the mental evaluation of which the parties or the court might have been made aware, whether those results were contested, or whether there was any other resolution settling the issue of the inmate's competency to proceed and enter his plea. *Sandoval-Vega v. State*, 2011 Ark. 393, — S.W.3d — (2011).

5-2-312. Lack of capacity — Affirmative defense.**CASE NOTES****Mental Disease or Defect.**

Appellant's convictions for second-degree murder and first-degree battery were affirmed because the jury was free to give credit to the forensic psychologist's testimony that appellant had no mental ill-

ness, or that he was able in any event to appreciate the criminality of his conduct and to conform his conduct in accordance with the law. *Lands v. State*, 2012 Ark. App. 616, — S.W.3d —, 2012 Ark. App. LEXIS 720 (Oct. 31, 2012).

SUBCHAPTER 4 — PARTIES TO OFFENSES**5-2-402. Liability for conduct of another generally.****CASE NOTES****Evidence.**

Defendant's concession that defendant participated in an aggravated robbery presented adequate grounds under subdivision (2) of this section to support defendant's conviction for capital-felony murder; it was patently clear that the victim was killed in furtherance of an aggravated robbery that was planned and executed by defendant. *Whiteside v. State*, 2011 Ark. 371, — S.W.3d — (2011).

Substantial evidence supported a juve-

nile's second-degree battery disposition based on accomplice liability under subsection (2) of this section because a codefendant testified that the juvenile solicited and encouraged the plan to beat her boyfriend, who she suspected of cheating; the juvenile could be found guilty of the conduct of her accomplices who threw the punches. *L.C. v. State*, 2012 Ark. App. 666, — S.W.3d —, 2012 Ark. App. LEXIS 782 (Nov. 28, 2012).

5-2-403. Accomplices.**CASE NOTES****Evidence.**

Defendant's concession that defendant participated in an aggravated robbery presented adequate grounds under subsection (a) of this section to support defendant's conviction for capital-felony murder; it was patently clear that the victim was killed in furtherance of an aggravated robbery that was planned and executed by defendant. *Whiteside v. State*, 2011 Ark. 371, — S.W.3d — (2011).

Judgment finding that appellant was an accomplice to misdemeanor theft of property was affirmed because appellant and the thief stood outside the off-limits locker room together, looked down the hall, went into the locker room together, looked out of and reentered the locker room more than once, and then left the locker room together. *T.D. v. State*, 2012 Ark. App. 140, — S.W.3d — (2012).

Substantial evidence supported a juve-

nile's second-degree battery disposition based on accomplice liability under subdivisions (a)(1)-(2) and (b)(1)-(2) of this section because a codefendant testified that the juvenile solicited and encouraged the plan to beat her boyfriend, who she suspected of cheating; the juvenile could be found guilty of the conduct of her accomplices who threw the punches. *L.C. v. State*, 2012 Ark. App. 666, — S.W.3d —, 2012 Ark. App. LEXIS 782 (Nov. 28, 2012).

Evidence was sufficient to support convictions of aggravated robbery, theft of property, aggravated assault, and an enhancement due to the use of a firearm because the victim identified appellant as the principal involved in several crimes and the accomplice under subsection (a) of this section as to the theft. The jury did not have to believe testimony from the other participant about appellant's involvement, and there were other factors linking

appellant to the crimes; both appellant and the other participant fled the scene, they were both found hiding in the same apartment, and they were both in proximity to a loaded gun and the victim's pants. *Bass v. State*, 2013 Ark. App. 55, — S.W.3d —, 2013 Ark. App. LEXIS 50 (Jan. 30, 2013).
Cited: *Strain v. State*, 2012 Ark. 42, — S.W.3d — (2012).

5-2-406. Multiple convictions — Different degrees.

CASE NOTES

Cited: *Strain v. State*, 2012 Ark. 42, — S.W.3d — (2012).

SUBCHAPTER 6 — JUSTIFICATION

5-2-604. Choice of evils.

CASE NOTES

Actor's Conduct.

Defendant's act of going outside with the gun and continuing interaction with the victim was sufficient evidence to reject the choice of evils defense under subdivision (a)(1) of this section and sustain his conviction for being a felon in possession of a firearm. *Green v. State*, 2011 Ark. App. 700, — S.W.3d — (2011).

5-2-605. Use of physical force generally.

CASE NOTES

Discipline.

Any error in refusing a religious leader's jury instruction on corporal punishment was harmless because such an instruction would have applied only to battery and would not have affected the verdict on outrage or conspiracy. By the verdict on outrage, the jury found that the leader willfully engaged in extreme and outrageous conduct, causing the former members emotional distress and bodily harm. *Ondrisek v. Hoffman*, — F.3d —, 2012 U.S. App. LEXIS 18196 (8th Cir. Aug. 28, 2012).

5-2-607. Use of deadly physical force in defense of a person.

CASE NOTES

Evidence.

Evidence was sufficient to rebut a claim of justification under this section and to convict defendant of attempted-capital murder and first-degree battery as defendant shot at the victim while he was running away, and defendant then drove around the neighborhood, found the victim, and fired more shots that struck the victim. *Green v. State*, 2011 Ark. App. 700, — S.W.3d — (2011).
Cited: *Stocker v. State*, 2012 Ark. App. 624, — S.W.3d —, 2012 Ark. App. LEXIS 753 (Nov. 7, 2012).

5-2-620. Use of force to defend persons and property within home.

CASE NOTES

Burden of Proof.

State's obligation to prove the elements of aggravated assault beyond a reasonable doubt subsumed the lesser burden of proof

to overcome the presumption of legality in the defense of one's home. *Montalvo v. State*, 2012 Ark. App. 119, — S.W.3d — (2012).

CHAPTER 3

INCHOATE OFFENSES

SUBCHAPTER 2 — CRIMINAL ATTEMPT

5-3-201. Conduct constituting attempt.

CASE NOTES

ANALYSIS

Attempted Aggravated Robbery.
Attempted Murder.
Evidence.

Attempted Aggravated Robbery.

Jury instruction on the lesser-included offense of attempted aggravated robbery was not warranted because there was no evidence of the offense of attempt under subdivision (a)(2) of this section; when appellant stormed out of a retail store's stockroom brandishing a gun and pointing it employees, he actually completed the offense of aggravated robbery. *Thomas v. State*, 2012 Ark. App. 466, — S.W.3d — (2012).

Attempted Murder.

Defendant's convictions for first-degree murder and aggravated robbery, in violation of this § 5-10-102(a), this section, and § 5-12-103(a), were supported by sufficient evidence, as the evidence showed that defendant was armed with a deadly weapon for the purpose of committing the theft of a cab driver, that defendant threatened the driver, and that the driver was shot in the struggle over the gun. *Garr v. State*, 2011 Ark. App. 509, — S.W.3d — (2011).

Evidence was sufficient to sustain de-

fendant's attempted first-degree murder conviction because defendant knocked on a door and fired a gun at the victim when he opened the door. The jury could reasonably have inferred that defendant purposely engaged in conduct that constituted a substantial step in a course of conduct known to cause death to another person, regardless of that person's identity. *Wells v. State*, 2012 Ark. App. 596, — S.W.3d —, 2012 Ark. App. LEXIS 718 (Oct. 24, 2012).

Evidence.

Denial of appellant's, an inmate's, petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 was appropriate because the evidence demonstrated that he was not prejudiced by his trial counsel's failure to properly renew his motion for directed verdict at the close of all the evidence. While the inmate was unable to challenge the sufficiency of the evidence in his direct appeal, there was substantial evidence to support the verdicts, including the inmate himself admitting to hitting his wife's car from behind and then getting out of his truck and shooting her; the surviving victim testified that after falling in an attempt to run away from the scene, she looked up and saw the inmate over her smiling and holding a shotgun. *Davis v. State*, 2011 Ark. 493, — S.W.3d — (2011).

5-3-203. Classification.

CASE NOTES

Reasonable Cause to Arrest.

Denial of motion to suppress was not clearly against the preponderance of the evidence, because the inventory search of defendant’s vehicle was proper upon defendant’s lawful arrest, and it was standard police policy to inventory the contents of any vehicle before having it

towed; at the time of defendant’s arrest theft of property was a Class C felony if the value of the property was less than \$2,500 but more than \$500, and criminal attempt was a Class D felony if the offense attempted was a Class C felony. *Boykin v. State*, 2012 Ark. App. 274, — S.W.3d — (2012).

SUBCHAPTER 4 — CRIMINAL CONSPIRACY

5-3-401. Conduct constituting conspiracy.

CASE NOTES

ANALYSIS

Evidence.
Sentence.

his wife, and identified the property to be taken from the residence. *Winkler v. State*, 2012 Ark. App. 704, — S.W.3d —, 2012 Ark. App. LEXIS 825 (Dec. 12, 2012).

Evidence.

Defendant committed an overt act in furtherance of a conspiracy to commit kidnapping, aggravated robbery, theft of property, and aggravated residential burglary because he took another person to his residence and showed the person the inside of the premises, discussed how to break in the residence and how to subdue

Sentence.

There was no error in the trial court’s sentencing of defendant because the court complied with the conspiracy statute and had the authority to impose a sentence of nine years’ imprisonment with respect to the conspiracy conviction. *Winkler v. State*, 2012 Ark. App. 704, — S.W.3d —, 2012 Ark. App. LEXIS 825 (Dec. 12, 2012).

5-3-403. Multiple criminal objectives.

CASE NOTES

Multiple Substantive Offenses.

Trial court did not err because judicial precedent allowed the prosecution of one count of conspiracy to commit multiple object offenses; moreover, defendant was not prejudiced by the inclusion of multiple

object offenses in the single charge because he faced thirty years in prison but the jury sentenced him to nine years’ imprisonment. *Winkler v. State*, 2012 Ark. App. 704, — S.W.3d —, 2012 Ark. App. LEXIS 825 (Dec. 12, 2012).

CHAPTER 4
DISPOSITION OF OFFENDERS

SUBCHAPTER 1 — GENERAL PROVISIONS

5-4-101. Definitions.

CASE NOTES

ANALYSIS

Restitution.
Suspension or Probation.

Restitution.

Court retained jurisdiction to revoke the suspended sentence for failure to pay restitution, because the petitioner was charged with fleeing to avoid arrest for possession of marijuana and causing property damage while fleeing, and was ordered to pay restitution for the damage he caused during the course of the criminal episode. *Arter v. State*, 2012 Ark. App. 327, — S.W.3d — (2012).

Suspension or Probation.

Trial court did not err in sentencing defendant after revoking his probation because defendant pleaded guilty to second-degree domestic battery, § 5-26-304, and third-degree domestic battery, § 5-26-305, and his sentences of ten and six years, respectively, were sentences that could have been originally imposed for the offenses of which he was found guilty. *Jones v. State*, 2012 Ark. App. 69, — S.W.3d — (2012).

5-4-102. Presentence investigation.

CASE NOTES

Presentence Report.

Court did not abuse its discretion by admitting the presentence report into evidence, because the probation officer's report was not admitted as expert testimony and the court assured defendant it would

give the report the proper weight, and defendant was aware of the contents of the report and elicited contradictory testimony from the therapist. *Howerton v. State*, 2012 Ark. App. 331, — S.W.3d — (2012).

5-4-103. Sentencing — Role of jury and court.

CASE NOTES

ANALYSIS

Sentence Fixed by Jury.
Sentencing by Court.

Sentence Fixed by Jury.

Petitioner's death sentence could not stand because the manner in which the jury completed its form allowed only the conclusion that it eliminated from its consideration all evidence presented of miti-

gating circumstances and sentenced petitioner to death solely based on an aggravating circumstance, which was reversible error. *Williams v. State*, 2011 Ark. 534, — S.W.3d — (2011).

Sentencing by Court.

Imposition of a mandatory life-without parole sentence for a juvenile capital-felony-murder offender was not illegal because it did not violate the offender's right

to a jury trial under subsection (a) of this section. *Whiteside v. State*, 2011 Ark. 371, — S.W.3d — (2011).

5-4-104. Authorized sentences generally.

CASE NOTES

ANALYSIS

Construction.

Fines.

Illegal Sentence.

Unauthorized Sentence.

Construction.

Act 192 of 1993 amended subdivision (e)(1) of this section and § 5-4-301(a)(1) to permit suspension and probation as alternative sentences for certain drug offenses. *Crouse v. State*, 2012 Ark. 442, — S.W.3d —, 2012 Ark. LEXIS 467 (Nov. 29, 2012).

Fines.

Court erred in failing to give defendant's proffered jury instruction allowing the jury to consider imposing a fine without imprisonment, notwithstanding his status as a habitual offender, because the model jury instruction which allowed for the jury to consider only the possibility of imprisonment when the defendant was a habitual offender did not accurately reflect the law, as it did not give the jury the option of considering only the payment of a fine, as authorized by subdivision (d)(3) of this section. *Andrews v. State*, 2012 Ark. App. 597, — S.W.3d —, 2012 Ark. App. LEXIS 702 (Oct. 24, 2012).

Illegal Sentence.

Upon defendant's conviction for rape and second-degree battery, the circuit court erred in ordering him to complete a sex-offender treatment program because he was sentenced under §§ 5-4-401, 5-4-501 and these statutes did not authorize

the court to order a sex-offender treatment program. Pursuant to § 5-4-303, a circuit court may clearly place conditions on a defendant when the court suspends the imposition of sentence or places the defendant on probation, but that there is no similar provision in subsection (d) of this section that would allow a court to place specific conditions on a sentence of incarceration. *White v. State*, 2012 Ark. 221, — S.W.3d — (2012).

Upon revoking defendant's probation for the fraudulent use of a credit or debit card, the trial court sentenced defendant to 365 days' incarceration and required her to attend a drug program. Because such a condition to incarceration was not authorized by subsection (d) of this section, the sentence was illegal. *Runion v. State*, 2012 Ark. App. 365, — S.W.3d — (2012).

Unauthorized Sentence.

In a case involving rape and other offenses, a remand was necessary for a trial court to resolve an incongruity within the judgment and commitment order itself, which referred to conditions of a suspended sentence, despite a specification that there were no suspended imposition of sentence. If completion of a Reduction of Sexual Victimization Program was ordered as a condition of incarceration, the circuit court had the opportunity to correct it because only the Arkansas Department of Correction that could have determined any conditions of incarceration. *Dillard v. State*, 2012 Ark. App. 503, — S.W.3d — (2012).

SUBCHAPTER 2 — FINES, COSTS, AND RESTITUTION**5-4-205. Restitution.****CASE NOTES****ANALYSIS**

Failure to Comply.
Jurisdiction.
Settlement.

Failure to Comply.

Trial court did not err in continuing defendant's probation for failure to pay restitution as ordered, despite defendant's argument that she was looking for work, that she was seeking to have her theft conviction overturned, and that she was trying to get disability, all of which claims were seriously undermined by the state. *Newsom v. State*, 2011 Ark. App. 760, — S.W.3d — (2011).

Appellant did not dispute that he did not pay known obligations and he acknowledged his income allowed him to pay, and it was the trial court's decision to determine the weight and credibility of the evidence; the trial court's findings in revoking appellant's suspended sentence for purposes of subdivision (f)(3) of this section were not clearly against the evidence. *Reyes v. State*, 2012 Ark. App. 358, — S.W.3d — (2012).

Jurisdiction.

Court retained jurisdiction to revoke the suspended sentence for failure to pay restitution, because the petitioner was charged with fleeing to avoid arrest for possession of marijuana and causing property damage while fleeing, and was ordered to pay restitution for the damage he caused during the course of the criminal episode. *Arter v. State*, 2012 Ark. App. 327, — S.W.3d — (2012).

Settlement.

Where defendant was convicted of battery and ordered to pay \$40,304.35 in restitution, the release signed by the victim in the civil suit when she received \$25,000 from the insurance company did not prevent the court from ordering defendant to pay the remaining restitution obligation of \$10,708.94; because the plain language of the release revealed absolutely no mention of the restitution order under subdivision (g)(3) of this section was inapplicable. *Moore v. State*, 2012 Ark. 350, — S.W.3d — (2012).

SUBCHAPTER 3 — SUSPENSION OR PROBATION**5-4-301. Crimes for which suspension or probation prohibited — Criteria for suspension or probation in other cases.****CASE NOTES****Drug Offenses.**

Act 192 of 1993 amended §§ 5-4-104(e)(1) and subdivision (a)(1) of this section to permit suspension and proba-

tion as alternative sentences for certain drug offenses. *Crouse v. State*, 2012 Ark. 442, — S.W.3d —, 2012 Ark. LEXIS 467 (Nov. 29, 2012).

5-4-303. Conditions of suspension or probation.

A.C.R.C. Notes. Acts 2012, No. 255, § 9, provides: "FEE GENERATION AND SUPPORT — COURTS. Unless specified otherwise in Arkansas Code §5-4-303(g) and Arkansas Code 16-87-213 the monies

collected by the courts under the authority of §5-4-303(g) and 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

"In the event that the law requires that

the fees levied under §5-4-303(g) be deposited into the State Administration of Justice Fund, the State Treasurer shall transfer the amount of the fees collected each month under the authority of Arkansas Code §5-4-303(g) from the State Adminis-

tration of Justice Fund to the State Central Services Fund.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CASE NOTES

ANALYSIS

Restitution or Reparation.
Unauthorized Sentence.

Restitution or Reparation.

Trial court did not err in continuing defendant's probation for failure to pay restitution as ordered, despite defendant's argument that she was looking for work, that she was seeking to have her theft conviction overturned, and that she was trying to get disability, all of which claims were seriously undermined by the state. *Newsom v. State*, 2011 Ark. App. 760, — S.W.3d — (2011).

Court retained jurisdiction to revoke the suspended sentence for failure to pay restitution, because the petitioner was charged with fleeing to avoid arrest for possession of marijuana and causing property damage while fleeing, and was ordered to pay restitution for the damage he caused during the course of the criminal episode. *Arter v. State*, 2012 Ark. App. 327, — S.W.3d — (2012).

Trial court was without jurisdiction to revoke defendant's suspended sentence for fourth offense DWI, because the period of the suspended sentence had expired two years prior to the state filing a petition for revocation. Defendant was not ordered to pay restitution, so jurisdiction could not be continued under subdivision (h)(2) of this section. *Wallace v. State*, 2012 Ark. App. 571, — S.W.3d — (2012).

Unauthorized Sentence.

Upon defendant's conviction for rape and second-degree battery, the circuit court erred in ordering him to complete a

sex-offender treatment program because he was sentenced under §§ 5-4-401, 5-4-501 and these statutes did not authorize the court to order a sex-offender treatment program. Pursuant to this section, a circuit court may clearly place conditions on a defendant when the court suspends the imposition of sentence or places the defendant on probation, but that there is no similar provision in § 5-4-104(d) that would allow a court to place specific conditions on a sentence of incarceration. *White v. State*, 2012 Ark. 221, — S.W.3d — (2012).

Upon revoking defendant's probation for the fraudulent use of a credit or debit card, the trial court sentenced defendant to 365 days' incarceration and required her to attend a drug program. Because defendant was not sentenced to probation, the condition to incarceration was not authorized by subdivision (d)(4) of this section; therefore, the sentence was illegal. *Runion v. State*, 2012 Ark. App. 365, — S.W.3d — (2012).

In a case involving rape and other offenses, a remand was necessary for a trial court to resolve an incongruity within the judgment and commitment order itself, which referred to conditions of a suspended sentence, despite a specification that there were no suspended imposition of sentence. If completion of a Reduction of Sexual Victimization Program was ordered as a condition of incarceration, the circuit court had the opportunity to correct it because only the Arkansas Department of Correction that could have determined any conditions of incarceration. *Dillard v. State*, 2012 Ark. App. 503, — S.W.3d — (2012).

5-4-304. Confinement as condition of suspension or probation.**CASE NOTES****Illegal Sentence.**

Upon revoking defendant's probation for the fraudulent use of a credit or debit card, the trial court sentenced defendant to 365 days' incarceration in accordance with subdivision (d)(1)(B) of this section

and required her to attend a drug program. Because such a condition to incarceration was not authorized by § 5-4-104(d), the sentence was illegal. *Runion v. State*, 2012 Ark. App. 365, — S.W.3d — (2012).

5-4-309. [Repealed.]**CASE NOTES****ANALYSIS**

Cause for Revocation.
Preponderance of the Evidence
Restitution or Reparation.

Cause for Revocation.

Because defendant's conviction for possession of cocaine with intent to deliver violated a condition of defendant's probation, a trial court did not err under subsection (d) of this section in revoking defendant's probation. *Dishman v. State*, 2011 Ark. App. 437, — S.W.3d — (2011).

Because a probationer conceded that the probationer did not contact the probation office in Arkansas to inquire about the probationer's obligations while the probationer was on parole in Louisiana and that the probationer had made no payments toward the probationer's fines, costs, and restitution since the probationer was placed on probation, pursuant to this section, probation was properly revoked. *Bass v. State*, 2011 Ark. App. 455, — S.W.3d — (2011).

Revocation of appellant's probation was affirmed because appellant's probation officer testified that appellant had stopped reporting and that he had tested positive for cocaine use. *McPherson v. State*, 2012 Ark. App. 50, — S.W.3d — (2012).

Trial court did not err under subsection (d) of this section in revoking defendant's probation for failure to register as a sex offender because defendant had not made any payments towards defendant's court costs and fees or indigent-defender fee; defendant had the ability to pay the fines and costs, as defendant had a job and had recently bought a vehicle, yet he had made

no payments at all. *Williams v. State*, 2012 Ark. App. 298, — S.W.3d — (2012).

Trial court did not err under subsection (d) of this section in revoking defendant's probation for delivery of Xanax because the evidence showed that defendant violated the conditions of probation by failing to appear for a drug test and testing positive twice for methamphetamine; defendant was also discharged from a treatment center and a drug-court program. *Johnson v. State*, 2012 Ark. App. 300, — S.W.3d — (2012).

Appellant's probation was properly revoked under subsection (d) of this section because any error in admitting a challenged statement was rendered harmless by the testimony of the declarant, and even if appellant had an excuse for the first time he failed to report to his probation officer, his subsequent failures to report were inexcusable violations of the terms and conditions of his probation. Thus, the appeal lacked merit, and counsel's motion to withdraw was granted under Ark. Sup. Ct. & Ct. App. R. 4-3(k)(1). *James v. State*, 2012 Ark. App. 429, — S.W.3d — (2012).

Court's revocation of probation was not clearly against the preponderance of the evidence, because the probation officer testified that the petitioner had missed ten reports, and the petitioner admitted as much during his testimony. *Hampton v. State*, 2012 Ark. App. 450, — S.W.3d — (2012).

Trial court did not err in revoking defendant's suspended sentences under subsection (d) of this section in cases where he pled guilty to forgery and theft by receiving, because the state proved by a

preponderance of the evidence that he committed a new offense of theft by receiving. The complainant testified defendant took his car for a test drive and did not return it; the officer dispatched to the vehicle-theft report testified defendant handed him the key to the car; and defendant's testimony that he took the car to a mechanic to have the transmission repaired made no sense. *Wallace v. State*, 2012 Ark. App. 571, — S.W.3d — (2012).

Evidence was sufficient to sustain the revocation of defendant's suspended sentence because the victim saw where defendant had broken into his shop, noticed that tools and equipment had been gathered, discovered defendant hiding inside the shop, and the victim identified defendant in a photographic lineup. *Upshaw v. State*, 2013 Ark. App. 41, — S.W.3d —, 2013 Ark. App. LEXIS 64 (Jan. 30, 2013).

Preponderance of the Evidence

Revocation of probation was proper, because the State need only prove that defendant committed one violation of the conditions, and the finding that defendant inexcusably failed to make payments as ordered was not clearly against the preponderance of the evidence; the probation officer testified that defendant was delinquent on his probation fees, and defendant

did not offer any testimony or other evidence. *Graydon v. State*, 2012 Ark. App. 587, — S.W.3d —, 2012 Ark. App. LEXIS 716 (Oct. 24, 2012).

Restitution or Reparation.

Trial court did not err in continuing defendant's probation for failure to pay restitution as ordered, despite defendant's argument that she was looking for work, that she was seeking to have her theft conviction overturned, and that she was trying to get disability, all of which claims were seriously undermined by the state. *Newsom v. State*, 2011 Ark. App. 760, — S.W.3d — (2011).

In a criminal contempt case under § 16-10-108(a)(3), substantial evidence supported the trial court's determination that defendant willfully violated the court's orders requiring her to make restitution payments because defendant testified that she received a monthly disability check in the amount of \$633 but did not use the money to make restitution payments. Subsection (d) of this section did not apply, because the trial court did not revoke defendant's suspended sentence. *Summers v. State*, 2012 Ark. App. 247, — S.W.3d — (2012).

Cited: *Joiner v. State*, 2012 Ark. App. 380, — S.W.3d — (2012).

SUBCHAPTER 4 — IMPRISONMENT

5-4-401. Sentence.

CASE NOTES

ANALYSIS

Postconviction Proceedings.
Propriety of Sentence.
Stacking.
Suspension or Probation.
Unauthorized Sentence.
Writ of Habeas Corpus Denied.

Postconviction Proceedings.

Trial court properly denied defendant's motion for postconviction relief because the evidence showed that defendant's guilty pleas were made on the advice of competent counsel; had defendant not pled guilty, defendant potentially faced up to life in prison for each rape offense and up to 10 years in prison for a failure-to-

appear offense, pursuant to subdivisions (a)(1) and (4) of this section. *Henson v. State*, 2011 Ark. 375, — S.W.3d — (2011).

Propriety of Sentence.

In a case where probation was revoked, a 20-year sentence for Class B felony kidnapping was not improper since it was authorized under subdivision (a)(3) of this section; the appellate court was unable to reduce a sentence within the range of punishment contemplated by the Arkansas Legislature. Moreover, since appellant failed to object to the sentence imposed, he was unable to argue on appeal that the trial court erred by failing to consider alternatives to the 20-year sentence. *Pfeifer v. State*, 2012 Ark. App. 556, — S.W.3d — (2012).

Inmate's appeal of the denial of the inmate's petition to correct an illegal sentence, pursuant to § 16-90-111, was dismissed because (1) Ark. R. Crim. P. 37.2(b) said all postconviction relief grounds cognizable under Ark. R. Crim. P. 37.1 had to be raised in a Rule 37.1 petition filed within 90 days of the date of judgment when a defendant pled guilty, even though § 16-90-111 let a trial court correct an illegal sentence at any time, as the statute was superseded to the extent the statute conflicted with the Rule's time limits, (2) the petition was filed over six years after judgment was entered, (3) the time limits in Ark. R. Crim. P. 37.2 were jurisdictional, denying a trial court jurisdiction if the time limits were not met, and, on appeal, a reviewing court, and (4) the inmate's sentence was within the prescribed statutory ranges in § 5-4-501(b)(2)(A) and subdivision (b)(1) of this section. *Redus v. State*, 2013 Ark. 9, — S.W.3d —, 2013 Ark. LEXIS 15 (Jan. 17, 2013).

Stacking.

State v. Lawson, 295 Ark. 37, 746 S.W.2d 544, 1988 Ark. LEXIS 84 (1988), prohibits "stacking" of specific subsequent-offense penalty enhancements like the one in the driving while impaired statute, which operates to convert a misdemeanor to a felony because of multiple recurrences of the same underlying offense within a specified period of time; the Court of Appeals of Arkansas, Division One, declines to expand *Lawson* past that boundary. Therefore, there was no impermissible stacking of a specific firearm enhancement statute for a felon in possession of a firearm under § 5-73-103(c)(1) with the general habitual-offender enhancement statute under subdivision (b)(2)(C) of this section; § 5-73-103(c)(1) did not contain an enhancement for recidivism, there was no greater sentence than if either statute was applied singly, and

the designation of the possession offense as a Class B felony was not an enhancement. *Moore v. State*, 2012 Ark. App. 662, — S.W.3d —, 2012 Ark. App. LEXIS 764 (Nov. 14, 2012).

Suspension or Probation.

Trial court did not err in sentencing defendant after revoking his probation because defendant pleaded guilty to second-degree domestic battery, § 5-26-304, and third-degree domestic battery, § 5-26-305, and his sentences of ten and six years, respectively, were sentences that could have been originally imposed for the offenses of which he was found guilty. *Jones v. State*, 2012 Ark. App. 69, — S.W.3d — (2012).

Unauthorized Sentence.

Upon defendant's conviction for rape and second-degree battery, the circuit court erred in ordering him to complete a sex-offender treatment program because he was sentenced under this section and § 5-4-501—these statutes did not authorize the court to order a sex-offender treatment program. *White v. State*, 2012 Ark. 221, — S.W.3d — (2012).

Court entered an illegal sentence by sentencing the petitioner to seventy-two-months' imprisonment on a misdemeanor, because if property damage occurred as a direct result of fleeing on foot, the offense was a Class A misdemeanor, and a sentence for a Class A misdemeanor should not exceed one year. *Arter v. State*, 2012 Ark. App. 327, — S.W.3d — (2012).

Writ of Habeas Corpus Denied.

Denial of writ of habeas corpus was proper, because life imprisonment for aggravated robbery was within the statutory range, irrespective of any enhancement as a habitual offender, and a sentence that was within the prescribed range was not illegal. *Goins v. Norris*, 2012 Ark. 192, — S.W.3d — (2012).

5-4-402. Place of imprisonment.

CASE NOTES

Jurisdiction.

Circuit court lacked jurisdiction to consider the appeal, because the petitioner's allegation, in reality, was a challenge to

the calculation of his parole eligibility and the Arkansas Department of Correction's application of a parole-eligibility statute to his sentence, and the judiciary had no

jurisdiction over how parole eligibility was determined or the conditions to be placed on it once the sentence was placed into execution. *Johnson v. State*, 2012 Ark. 212, — S.W.3d — (2012).

5-4-403. Multiple sentences — Concurrent and consecutive terms.

CASE NOTES

ANALYSIS

Determination of Sentence.
Error.

Determination of Sentence.

Trial court did not err in sentencing defendant after revoking his probation because defendant pleaded guilty to second-degree domestic battery, § 5-26-304, and third-degree domestic battery, § 5-26-305, and his sentences of ten and six years, respectively, were sentences that could have been originally imposed for the offenses of which he was found guilty. *Jones v. State*, 2012 Ark. App. 69, — S.W.3d — (2012).

Trial court could have reasonably concluded that defendant’s commission of five new felonies warranted consecutive sentences, given that the sentences defendant had received on defendant’s previous 12 felonies had apparently not served to deter defendant’s criminal conduct.

Turner v. State, 2012 Ark. App. 150, — S.W.3d — (2012).

Error.

Applicant was entitled to relief, because an error by the Arkansas Department of Correction (ADC) in failing to enter the Fourth Division conviction and sentence in the ADC system caused the failure to have the applicant complete his concurrent state sentences before being transferred to the United States Bureau of Prisons (BOP); the ADC must correct its record to show that the applicant began serving his Fourth Division sentence on the same date he began to serve his Second Division sentence, and upon transfer to the ADC from the BOP, the applicant must serve whatever remains of the sentence he would have served in the ADC had the ADC run his state sentences concurrently as required. *Kelley v. Norris*, 2012 Ark. 86, — S.W.3d — (2012).

SUBCHAPTER 5 — EXTENDED TERM OF IMPRISONMENT

5-4-501. Habitual offenders — Sentencing for felony.

RESEARCH REFERENCES

ALR. Construction and Application of U.S. Const. Art. I, § 10, cl. 1, and State Constitutional Provisions Proscribing State Bills of Attainder. 63 A.L.R.6th 1.

CASE NOTES

ANALYSIS

Information.
Propriety of Sentence.
Sentences.

Information.

Circuit court did not err in sentencing defendant as a habitual offender because there was no error in the form of the amended felony information; the amended

felony information incorporated by reference the charges included in the original information and quoted the habitual-offender statute, and that was sufficient to alert defendant to the fact that he could be sentenced as a habitual offender and that his prior convictions could be considered in assessing an enhanced sentence. *Glaze v. State*, 2011 Ark. 464, — S.W.3d — (2011).

There was no error in the timing of the

amendment of the felony information because the amendment did not change the nature of the crime charged, and there was no basis for concluding that defendant was unfairly surprised by the state's amended felony information; prior to the filing of the amended felony information, defendant received a certified copy of the judgment and commitment order convicting him of three prior felonies. *Glaze v. State*, 2011 Ark. 464, — S.W.3d — (2011).

Propriety of Sentence.

Petitioner's 900-month prison sentence as a habitual offender for the offenses of aggravated robbery, theft of property, and two counts of second-degree battery was not illegal because the sentence was within the range provided in subdivision (b)(2)(A) of this section. *Reed v. Hobbs*, 2012 Ark. 61, — S.W.3d — (2012).

Trial court did not err in sentencing defendant to 30 years in prison as a habitual offender because defendant was convicted of four Class C felonies and one Class B felony, and therefore faced a maximum sentence of 160 years in prison as a habitual offender under subdivisions (b)(2)(C) and (D) of this section. *Turner v. State*, 2012 Ark. App. 150, — S.W.3d — (2012).

Upon defendant's conviction for rape and second-degree battery, the circuit court erred in ordering him to complete a sex-offender treatment program because he was sentenced under § 5-4-401 and this section—these statutes did not authorize the court to order a sex-offender treatment program. *White v. State*, 2012 Ark. 221, — S.W.3d — (2012).

Inmate's appeal of the denial of the inmate's petition to correct an illegal sentence, pursuant to § 16-90-111, was dismissed because (1) Ark. R. Crim. P. 37.2(b) said all postconviction relief grounds cognizable under Ark. R. Crim. P. 37.1 had to be raised in a Rule 37.1 petition filed within 90 days of the date of judgment when a defendant pled guilty, even though Ark. Code Ann. § 16-90-111 let a trial court correct an illegal sentence at any time, as the statute was superseded to the extent the statute conflicted with the Rule's time limits, (2) the petition was filed over six years after judgment was entered, (3) the time limits in Ark. R. Crim. P. 37.2 were jurisdictional, denying a trial court jurisdiction if the time limits

were not met, and, on appeal, a reviewing court, and (4) the inmate's sentence was within the prescribed statutory ranges in subdivision (b)(2)(A) of this section and § 5-4-401(b)(1). *Redus v. State*, 2013 Ark. 9, — S.W.3d —, 2013 Ark. LEXIS 15 (Jan. 17, 2013).

Sentences.

Circuit court erred in sentencing defendant under § 16-90-201 because the statute was repealed by implication with the enactment of this section, and the effect of sentencing defendant under § 16-90-201 was prejudicial since there was the possibility that the jury would have returned a sentence less than the minimum set forth in § 16-90-201; because sentencing had to be determined by the law in effect at the time of the commission of a crime, defendant was entitled to a jury instruction in accordance with this section, the Criminal Code's habitual-offender statute. *Glaze v. State*, 2011 Ark. 464, — S.W.3d — (2011).

General Assembly clearly took up the subject matter of the enhanced sentencing of habitual offenders anew in this section, the more current statute, and the conflict between § 16-90-201 and this section is irreconcilable, resulting in a repeal by implication of § 16-90-201; a plain reading of this section and § 16-90-201 makes clear that this section is the more comprehensive statute, covering the same subject matter as § 16-90-201 as well as including additional provisions to provide for the sentencing of habitual offenders who are convicted of serious and violent felonies, and it is further evident that the two statutes cannot be read together harmoniously, as the two statutes cannot be read together harmoniously, as the sentencing ranges prescribed by each statute conflict. *Glaze v. State*, 2011 Ark. 464, — S.W.3d — (2011).

Defendant's sentence was proper under §§ 5-4-501 to 5-4-504 because the reference, "Attorney: Public Defender," was sufficient to prove that defendant was represented by counsel regarding his Illinois conviction for aggravated robbery. There was no supplemental testimony explaining the reference, but it was clear that a "public defender" could only reasonably reference representation for defendant; thus, the designated reference in the pen pack was sufficient to satisfy the state's burden in the case. *Anthony v.*

State, 2011 Ark. App. 660, — S.W.3d — (2011). 103(2). Walden v. State, 2012 Ark. App. 307, — S.W.3d — (2012).

Denial of writ of habeas corpus was proper, because life imprisonment for aggravated robbery was within the statutory range, irrespective of any enhancement as a habitual offender, and a sentence that was within the prescribed range was not illegal. Goins v. Norris, 2012 Ark. 192, — S.W.3d — (2012).

In an aggravated robbery case where habitual offender status was at issue, a trial court did not err by refusing to give the jury an instruction on the sentences that appellant had received in federal court for prior bank robbery convictions because it was within the trial court’s discretion to do so, pursuant to § 16-97-

In an aggravated robbery case, an issue relating to a motion for a new trial was preserved for appellate review because an oral motion prior to the entry of the judgment and commitment order was made in open court, the state was aware that the motion had been made, and the state was given an opportunity to respond. However, because appellant received a sentence within the statutory range short of the maximum, he was not prejudiced by an victim-impact statement, and a new trial was not warranted; appellant received a 60-year term of imprisonment, but the maximum he could have received was life in prison. Walden v. State, 2012 Ark. App. 307, — S.W.3d — (2012).

5-4-502. Habitual offenders — Sentencing procedure.

CASE NOTES

Instruction.

In an aggravated robbery case where habitual offender status was at issue, a trial court did not err by refusing to give the jury an instruction on the sentences that appellant had received in federal

court for prior bank robbery convictions because it was within the trial court’s discretion to do so, pursuant to § 16-97-103(2). Walden v. State, 2012 Ark. App. 307, — S.W.3d — (2012).

SUBCHAPTER 6 — TRIAL AND SENTENCE — CAPITAL MURDER

5-4-602. Capital murder charge — Trial procedure.

CASE NOTES

Mitigating Circumstances.

Granting of petitioner’s, an inmate’s, petition to reinvest jurisdiction in the trial court to pursue a petition for writ of error coram nobis on the issue of the state’s failure to disclose a sheriff’s report concerning the inmate’s childhood abuse was

proper because the claim had apparent merit, which the circuit court should evaluate under subdivision (4)(B)(ii) of this section. Howard v. State, 2012 Ark. 177, — S.W.3d — (2012).

Cited: Dimas-Martinez v. State, 2011 Ark. 515, — S.W.3d — (2011).

5-4-603. Findings required for death sentence — Harmless error review.

CASE NOTES

ANALYSIS

Aggravating or Mitigating Circumstances.
Death Penalty.

Aggravating or Mitigating Circumstances.

Petitioner’s death sentence could not stand because the manner in which the jury completed its form allowed only the

conclusion that it eliminated from its consideration all evidence presented of mitigating circumstances and sentenced petitioner to death solely based on an aggravating circumstance, which was reversible error. *Williams v. State*, 2011 Ark. 534, — S.W.3d — (2011).

Death Penalty.

Denial of defendant's motion to prohibit the state from seeking the death penalty

on retrial of the charge of capital murder was appropriate because there was no acquittal of the death penalty when the circuit court imposed the life sentence as required by law after the jury deadlocked on the penalty issue and then the circuit court imposed the sentence of life without parole as a matter of law, under subsection (c) of this section. *Osburn v. State*, 2011 Ark. 406, — S.W.3d — (2011).

5-4-604. Aggravating circumstances.

CASE NOTES

Cited: *Dimas-Martinez v. State*, 2011 Ark. 515, — S.W.3d — (2011).

5-4-605. Mitigating circumstances.

CASE NOTES

Trial Proceedings.

Petitioner's death sentence could not stand because the manner in which the jury completed its form allowed only the conclusion that it eliminated from its consideration all evidence presented of miti-

gating circumstances and sentenced petitioner to death solely based on an aggravating circumstance, which was reversible error. *Williams v. State*, 2011 Ark. 534, — S.W.3d — (2011).

5-4-617. Method of execution.

CASE NOTES

ANALYSIS

Constitutionality.
FOIA Requests.

Constitutionality.

Prisoners could do no more than speculate that this section, the Arkansas Method of Execution Act, created a significant risk of more painful execution because it granted the Director of the Arkansas Department of Correction the ability to omit anesthesia from the protocol. This was not the significant risk of increased punishment needed for a violation of the Ex Post Facto Clause. *Williams v. Hobbs*, 658 F.3d 842 (8th Cir. 2011).

Supreme Court declared the entirety of

the Method of Execution Act of 2009 unconstitutional. The legislature abdicated its responsibility and passed to the Department of Correction the unfettered discretion to determine all protocol and procedures, most notably the chemicals to be used, for a state execution. *Hobbs v. Jones*, 2012 Ark. 293, — S.W.3d — (2012).

FOIA Requests.

The plain language of subdivision (a)(5)(B) of this section defeated death-row prisoners' argument that it prohibited disclosure of the quantity, method, and order of administration of the chemicals because it expressly indicated that such information will be available through a request under the Arkansas Freedom Of

Information Act of 1967 (FOIA), § 25-19-101 et seq. Williams v. Hobbs, 658 F.3d 842 (8th Cir. 2011).

5-4-618. Mental retardation.

CASE NOTES

Determinative Factors.

Denial of appellant’s, an inmate’s, petition for postconviction relief was appropriate because he alleged only bare conclusions and had not overcome the presumption of trial counsel’s competence by identifying specific acts and omissions that could not have been the result of reasonable professional judgment. Coun-

sel’s testimony established that, because the inmate’s IQ fell at the pivotal point of 65, that was a strategic decision not to pursue further the issue of the inmate’s IQ and mental retardation. Anderson v. State, 2011 Ark. 488, — S.W.3d — (2011).

Cited: Dimas-Martinez v. State, 2011 Ark. 515, — S.W.3d — (2011).

SUBCHAPTER 7 — ENHANCED PENALTIES FOR CERTAIN OFFENSES

5-4-702. Enhanced penalties for offenses committed in presence of a child.

CASE NOTES

Evidence.

Evidence was sufficient to convict defendant of committing aggravated assault and terroristic threatening in the presence of a child, his infant son; in her 911

call, defendant’s wife stated that defendant choked her, she could not breathe, and he threatened to kill her, all in the presence of their child. Mathis v. State, 2012 Ark. App. 285, — S.W.3d — (2012).

SUBTITLE 2. OFFENSES AGAINST THE PERSON

CHAPTER 10

HOMICIDE

5-10-101. Capital murder.

RESEARCH REFERENCES

ALR. Sufficiency of Evidence to Support Homicide Conviction Where No Body Was Produced. 65 A.L.R.6th 359.

CASE NOTES

ANALYSIS

Double Jeopardy.
Evidence.
Premeditation and Deliberation.

Double Jeopardy.

Defendant convicted of capital murder, attempted capital murder, and aggravated robbery failed to show that his double jeopardy rights were violated; un-

der subdivision (d)(1)(A) of this section, separate convictions and sentences were authorized for both the capital murder and the felony underlying the capital-murder charge. *Jackson v. State*, 2013 Ark. 19, — S.W.3d —, 2013 Ark. LEXIS 27 (Jan. 24, 2013).

Evidence.

Defendant's concession that defendant participated in an aggravated robbery presented adequate grounds to support defendant's conviction for capital-felony murder; it was patently clear that the victim was killed in furtherance of an aggravated robbery that was planned and executed by defendant. *Whiteside v. State*, 2011 Ark. 371, — S.W.3d — (2011).

Defendant's conviction for capital-murder under subdivision (a)(4) of this section was appropriate because the evidence was sufficient. When confronted with the inconsistencies between the testimony of his daughter's mother and defendant's testimony, the jury believed the mother and found that defendant acted with premeditation and deliberation by taking the shotgun to the house, walking to the porch, loading the gun, and firing at the victim after she threw her hands in surrender. *Williams v. State*, 2011 Ark. 432, — S.W.3d — (2011).

Defendant's conviction for capital-felony murder under subdivision (a)(1) of this section and § 5-12-103(a)(3) was appropriate because the evidence was sufficient. The last number dialed on the victim's cellular phone was to a phone registered to defendant and a fellow prisoner testified that defendant confessed to selling drugs to the victim, robbing and shooting him, and then leaving him on the road. *Dixon v. State*, 2011 Ark. 450, — S.W.3d — (2011).

Defendant's conviction for capital murder under subdivision (a)(4) of this section was proper because the circuit court did not err in denying his motion for a directed verdict. Defendant's stabbing of the victim brought about the officers' use of deadly force that killed the victim; had defendant not been stabbing her, the officers would not have attempted to end defendant's attack on her by using deadly force. *Anderson v. State*, 2011 Ark. 461, — S.W.3d — (2011).

Substantial evidence supported defendant's conviction for capital murder, in

violation of subdivision (a)(1)(B) of this section, because the state offered evidence to corroborate defendant's confession; the state presented evidence that the murder victim died at the hands of another. *Meadows v. State*, 2012 Ark. 57, — S.W.3d — (2012).

Trial court did not err by denying defendant's motion for a directed verdict because the evidence was sufficient to support his capital murder conviction, as it showed that: (1) prior to the victim's death, defendant bragged to a witness that he was going to kill someone; (2) several hours later, an eyewitness was in the cab of the truck sitting between defendant and the victim when defendant began stabbing the victim repeatedly with a knife; (3) two other witnesses who stopped to help heard defendant admit that he had stabbed the victim and saw defendant toss the knife into the back of the truck; (4) one witness heard defendant tell the eyewitness that they needed to take the truck and get rid of the body; (5) the knife was recovered from the truck and blood on it matched the victim; (6) defendant identified the knife as his own; (7) the victim died as a result of multiple stab wounds that were consistent with the knife that was recovered from the truck; and (8) although there was testimony that defendant was intoxicated on the night of the murder, voluntary intoxication was not a defense. *Leach v. State*, 2012 Ark. 179, — S.W.3d — (2012).

Evidence was sufficient to sustain defendant's convictions for capital murder and aggravated robbery because defendant drove his accomplice to the victim's house, defendant admitted to hitting the victim over the head, and the evidence illustrated he wanted to harm the victim because he did it again after he stated that the victim was not fazed. Additionally, the victim's wallet was taken from the house. *Laswell v. State*, 2012 Ark. 201, — S.W.3d — (2012).

Premeditation and Deliberation.

Armed defendant's statements to a bank courier, "Come on with the bags, don't make me kill you," along with his firing the gun three times, provided evidence of deliberation by showing that he considered killing the courier, supporting his conviction for attempted premeditated capital murder. *Ali v. State*, 2011 Ark. App. 758, — S.W.3d — (2011).

5-10-102. Murder in the first degree.**RESEARCH REFERENCES**

ALR. Sufficiency of Evidence to Support Homicide Conviction Where No Body Was Produced. 65 A.L.R.6th 359.

CASE NOTES**ANALYSIS**

Assistance of Counsel.
Evidence.
Indictment or Information.
Instructions.
Intent.

Assistance of Counsel.

Denial of appellant's, an inmate's, petition for postconviction relief was proper because, while he was not able to directly appeal any challenge to the sufficiency of the evidence, there was substantial evidence to support his felony-murder conviction. He failed to demonstrate that he was prejudiced by trial counsel's error in failing to make a directed-verdict motion on the lesser-included charge of first-degree felony murder under subdivision (a)(1) of this section. *Lockhart v. State*, 2011 Ark. 396, — S.W.3d — (2011).

Evidence.

Denial of appellant's, an inmate's, petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 was appropriate because the evidence demonstrated that he was not prejudiced by his trial counsel's failure to properly renew his motion for directed verdict at the close of all the evidence. While the inmate was unable to challenge the sufficiency of the evidence in his direct appeal, there was substantial evidence to support the verdicts, including the inmate himself admitting to hitting his wife's car from behind and then getting out of his truck and shooting her; the surviving victim testified that after falling in an attempt to run away from the scene, she looked up and saw the inmate over her smiling and holding a shotgun. *Davis v. State*, 2011 Ark. 493, — S.W.3d — (2011).

Defendant's convictions for first-degree murder and aggravated robbery, in violation of subsection (a) of this section and §§ 5-3-201 and 5-12-103(a), were sup-

ported by sufficient evidence, as the evidence showed that defendant was armed with a deadly weapon for the purpose of committing the theft of a cab driver, that defendant threatened the driver, and that the driver was shot in the struggle over the gun. *Garr v. State*, 2011 Ark. App. 509, — S.W.3d — (2011).

Evidence was sufficient to convict defendant of first-degree murder under subdivision (a)(2) of this section because the three gunshot wounds to the victim alone, at least two of which were fired 35-40 seconds apart, ran counter to defendant's accidental shooting theory; and the evidence supported an inference of purposeful intent under § 5-2-202(1). *Smith v. State*, 2012 Ark. App. 359, — S.W.3d — (2012).

Appellant's first-degree murder conviction was affirmed because there was evidence that appellant had previously discussed robbing the victim by bashing in his head, there was evidence that appellant owed the victim money and had been cut off from his supply of drugs, and there was evidence that it would be very difficult for the gun to go off accidentally. *McClard v. State*, 2012 Ark. App. 573, — S.W.3d — (2012).

Evidence was sufficient to sustain defendant's attempted first-degree murder conviction because defendant knocked on a door and fired a gun at the victim when he opened the door. The jury could reasonably have inferred that defendant purposely engaged in conduct that constituted a substantial step in a course of conduct known to cause death to another person, regardless of that person's identity. *Wells v. State*, 2012 Ark. App. 596, — S.W.3d —, 2012 Ark. App. LEXIS 718 (Oct. 24, 2012).

Indictment or Information.

In a murder case, the trial court did not err in allowing the state to amend the

information on the morning of trial to include a felony-firearm enhancement. Because the charge defendant was tried for was contained in the original information, the reviewing court failed to see how defendant was unfairly surprised or otherwise prejudiced by the amended information. *Plessy v. State*, 2012 Ark. App. 74, — S.W.3d — (2012).

Instructions.

Petitioner was properly denied postconviction relief because the jury was instructed as to the mental state required for each of the degrees of homicide, the jury considered the evidence presented at trial, and the jury found that petitioner had the requisite mental state for a first-degree-murder conviction; petitioner's

conviction meant that the jury had found that petitioner had the requisite mental state for first-degree murder. *Strain v. State*, 2012 Ark. 184, — S.W.3d — (2012).

Intent.

Evidence was sufficient to support a finding of intent for the purpose of first-degree murder, in violation of subdivision (a)(2) of this section, because the victim was shot at least seven times and suffered several gunshot wounds to the back and front of the body; evidence of defendant's flight immediately after the murder further supported the verdict. *Wells v. State*, 2012 Ark. App. 276, — S.W.3d — (2012).

Cited: *Holian v. State*, 2013 Ark. 7, — S.W.3d —, 2013 Ark. LEXIS 11 (Jan. 17, 2013).

5-10-103. Murder in the second degree.

RESEARCH REFERENCES

ALR. Sufficiency of Evidence to Support Homicide Conviction Where No Body Was Produced. 65 A.L.R.6th 359.

CASE NOTES

Evidence.

Appellant's conviction for second-degree murder was affirmed because the pattern of the gunshots, which were aimed at the victim's chest and upper-arm area, as well as the trajectory of the bullets showed that appellant acted deliberately in a manner that would naturally and probably culminate in the victim's death. *Phillips v. State*, 2011 Ark. App. 575, — S.W.3d — (2011).

In reviewing the evidence to support appellant's second-degree murder conviction, the court would not consider a 911 call because the record did not contain a verbatim record of the call as the jury heard it and because the call was not

properly abstracted. *Rainer v. State*, 2012 Ark. App. 588, — S.W.3d —, 2012 Ark. App. LEXIS 715 (Oct. 24, 2012).

Evidence was sufficient to affirm the finding that appellant caused the victim's death with the purpose of causing her serious physical injury, and thus appellant's second-degree murder conviction was affirmed; there were many signs of a fight, including blood spatters and a trail of blood, appellant's thumbprint was on the murder weapon, the location of the victim's wound was not consistent with a fall, and the victim called for help, not appellant. *Rainer v. State*, 2012 Ark. App. 588, — S.W.3d —, 2012 Ark. App. LEXIS 715 (Oct. 24, 2012).

5-10-104. Manslaughter.

CASE NOTES

ANALYSIS

Evidence.
Lesser Included Offenses.

Evidence.

Appellant's conviction for manslaughter was affirmed because while a no-knock, nighttime search warrant was executed at appellant's apartment, shots were fired as soon as the SWAT team hit the door, the police returned fire, two police officers were shot, and two persons inside the residence were shot. *Porter v. State*, 2012 Ark. App. 139, — S.W.3d — (2012).

Lesser Included Offenses.

In a case in which a jury convicted defendant of capital murder in the shoot-

ing death of his ex-wife, the trial court properly refused to instruct the jury on reckless manslaughter and negligent homicide. Defendant, who fired once into a residence, mortally striking his ex-wife in the back, offered no rational basis to support giving either instruction on the basis that his actions were reckless or negligent. *Jones v. State*, 2012 Ark. 38, — S.W.3d — (2012).

Cited: *Holian v. State*, 2013 Ark. 7, — S.W.3d —, 2013 Ark. LEXIS 11 (Jan. 17, 2013).

5-10-105. Negligent homicide.

CASE NOTES

ANALYSIS

Expungement.
Instructions.
Intoxication.

Expungement.

Circuit court erred by sealing the applicant's conviction for negligent-homicide pursuant to this section, because given the plain meaning of this section, the statute lacked any provision for expungement. *State v. Martin*, 2012 Ark. 191, — S.W.3d — (2012).

Instructions.

In a case in which a jury convicted defendant of capital murder in the shooting death of his ex-wife, the trial court properly refused to instruct the jury on reckless manslaughter and negligent homicide. Defendant, who fired once into a residence, mortally striking his ex-wife in the back, offered no rational basis to support giving either instruction on the basis that his actions were reckless or negligent. *Jones v. State*, 2012 Ark. 38, — S.W.3d — (2012).

Because there was no negligent behavior on the part of defendant pursuant to

§ 5-2-202(4), his action were purposeful, and a firearm and toolmark examiner for the Arkansas State Crime Lab testified that for the gun to be fired, the trigger had to be pulled, which usually required five to five and a half pounds of pressure, the trial court did not err in refusing to give the jury an instruction on negligent homicide under subdivision (b)(1) of this section. *Ratterree v. State*, 2012 Ark. App. 701, — S.W.3d —, 2012 Ark. App. LEXIS 821 (Dec. 12, 2012).

Intoxication.

Although the circuit court erred in allowing the results of defendant's blood-alcohol test into evidence since the state failed to provide evidence that the blood was drawn by a physician or a person acting under the direction and supervision of a physician as required by § 5-65-204, defendant was properly convicted of negligent homicide in violation of this section and aggravated assault in violation of § 5-13-204 because there was overwhelming evidence of defendant's intoxication; while the only evidence regarding the concentration of alcohol in defendant's blood came from the blood test, there was sufficient evidence at trial to support de-

fendant's conviction on the alternative theory that defendant negligently caused the victim's death as a result of operation of a motor vehicle while intoxicated. *Bates v. State*, 2011 Ark. App. 446, — S.W.3d — (2011).

In a case in which defendant was convicted of negligent homicide under subdivision (a)(1)(a) of this section, there was substantial evidence that defendant was intoxicated at the time of the accident where: (1) defendant admitted at trial that he had smoked marijuana earlier in the day of the accident and that he had ingested a pill and a half of Xanax shortly

before the accident occurred; (2) the driver of a tractor-trailer rig testified that defendant's vehicle veered into his lane and narrowly missed his vehicle and that he saw defendant continue on the wrong side of the road for approximately three-fourths of a mile, without correcting, before striking the victims' vehicles; and (3) another driver testified that he drove off the shoulder of the road to avoid defendant's vehicle and that, when defendant passed him, defendant was leaning against the driver-side door of his vehicle and appeared to be asleep. *Ross v. State*, 2012 Ark. App. 243, — S.W.3d — (2012).

CHAPTER 11

KIDNAPPING AND RELATED OFFENSES

5-11-101. Definitions.

CASE NOTES

Restraint Without Consent.

Counsel was not ineffective for failing to move for a directed verdict on the issue of the amount of restraint used to commit a kidnapping because the state presented substantial evidence that defendant used

deception to restrain the victim under subdivision (3)(A) of this section; defendant told the victim he was a police officer and showed her a badge, which constituted deception. *Prater v. State*, 2012 Ark. 164, — S.W.3d — (2012).

5-11-102. Kidnapping.

CASE NOTES

ANALYSIS

Conspiracy.

Restraint.

Sentencing.

Voluntary Release of Victim.

Conspiracy.

Defendant committed an overt act in furtherance of a conspiracy to commit kidnapping, aggravated robbery, theft of property, and aggravated residential burglary because he took another person to his residence and showed the person the inside of the premises, discussed how to break in the residence and how to subdue his wife, and identified the property to be taken from the residence. *Winkler v. State*, 2012 Ark. App. 704, — S.W.3d —, 2012 Ark. App. LEXIS 825 (Dec. 12, 2012).

Restraint.

Counsel was not ineffective for failing to move for a directed verdict on the issue of the amount of restraint used to commit a kidnapping, in violation of subdivision (a)(5) of this section, because the state presented substantial evidence that defendant used deception to restrain the victim; defendant told the victim he was a police officer and showed her a badge, which constituted deception. *Prater v. State*, 2012 Ark. 164, — S.W.3d — (2012).

Sentencing.

In a case where probation was revoked, a 20-year sentence for Class B felony kidnapping was not improper since it was authorized under § 5-4-401(a)(3); the appellate court was unable to reduce a sentence within the range of punishment contemplated by the Arkansas Legisla-

ture. Moreover, since appellant failed to object to the sentence imposed, he was unable to argue on appeal that the trial court erred by failing to consider alternatives to the 20-year sentence. *Pfeifer v. State*, 2012 Ark. App. 556, — S.W.3d — (2012).

Voluntary Release of Victim.

Trial court did not err in denying defendant's motion for a directed verdict to

reduce the kidnapping charge from a Class Y felony to a Class B felony under subdivisions (b)(1) and (2) of this section because defendant released the victim based on her resistance, and because he did not leave her in a safe place when he left her in the path of his vehicle. *Huff v. State*, 2012 Ark. 388, — S.W.3d — (2012).

CHAPTER 12

ROBBERY

5-12-102. Robbery.

CASE NOTES

ANALYSIS

Accomplice.
Evidence.
Lesser Included Offenses.
Sufficiency of Evidence.
Threat of Force.

Accomplice.

There was sufficient evidence tending to connect defendant to an aggravated robbery and thus to corroborate accomplice testimony because surveillance video established the commission of the crime and an officer testified that defendant matched the description of a robber in the video based on his height and that the officer confirmed the truth of identifying information from a non-accomplice. *Smith v. State*, 2012 Ark. App. 534, — S.W.3d — (2012).

Evidence.

Evidence was sufficient to sustain defendant's convictions for capital murder and aggravated robbery because defendant drove his accomplice to the victim's house, defendant admitted to hitting the victim over the head, and the evidence illustrated he wanted to harm the victim because he did it again after he stated that the victim was not fazed. Additionally, the victim's wallet was taken from the house. *Laswell v. State*, 2012 Ark. 201, — S.W.3d — (2012).

Lesser Included Offenses.

Trial court did not err in failing to give a jury an instruction on simple robbery, which was a lesser-included offense of aggravated robbery, because defendant essentially argued that defendant did not commit any offense at all; hence, there was no rational basis for the giving of a lesser-included offense instruction. *Nickelson v. State*, 2012 Ark. App. 363, — S.W.3d — (2012).

Counsel complied with Ark. Sup. Ct. & Ct. App. R. 4-3(k), and appellant's appeal from his aggravated robbery conviction and sentence lacked merit because (1) the sufficiency of the evidence was not preserved for appellate review as counsel's motion for directed verdict failed to state with specificity the deficiency in the state's evidence, in contravention of Ark. R. Crim. P. 33.1; (2) there was no merit to appellant's chain-of-custody argument to the items found in his car pursuant to a search warrant as there was no evidence of tampering presented, and there was testimony that the items were logged into evidence and remained in the evidence room until the trial; (3) it was undisputed that an armed robbery took place under § 5-12-103(a)(1), so it was not an error to refuse to give an instruction on the lesser-included offense of robbery under subsection (a) of this section; and (4) appellant could not raise an ineffective assistance of counsel claim or challenge the qualifica-

tions of jurors for the first time on appeal. *Mace v. State*, 2012 Ark. App. 420, — S.W.3d — (2012).

Jury instruction on the lesser-included offense of attempted aggravated robbery was not warranted because there was no evidence of the offense of attempt under § 5-3-201(a)(2); when appellant stormed out of a retail store's stockroom brandishing a gun and pointing it employees, he actually completed the offense of aggravated robbery. *Thomas v. State*, 2012 Ark. App. 466, — S.W.3d — (2012).

Sufficiency of Evidence.

Appellant's convictions for aggravated robbery, aggravated residential burglary, and misdemeanor fleeing were affirmed where a witness testified that appellant pointed a sawed-off shotgun at his head, which would necessarily constitute proof that appellant was "armed with a deadly weapon"; the testimony of one eyewitness was sufficient to sustain a conviction. *Ri-*

ley v. State, 2011 Ark. App. 511, — S.W.3d — (2011).

There was sufficient evidence to sustain an aggravated robbery conviction under this section because there was a verbal representation in a note; there was no requirement that the threat of physical harm be made directly or indirectly, only that physical force be immediately threatened, however the threat was communicated. *Walden v. State*, 2012 Ark. App. 307, — S.W.3d — (2012).

Threat of Force.

Although defendant shot the victim three times as the result of an inadvertent collision with the victim as the victim attempted to run, actual physical force was not required to convict defendant of aggravated robbery. His possession of a gun and his threat to employ the gun were sufficient to support his conviction under this section and § 5-12-103. *Ali v. State*, 2011 Ark. App. 758, — S.W.3d — (2011).

5-12-103. Aggravated robbery.

RESEARCH REFERENCES

ALR. Parts of Human Body, other than Feet, as Deadly or Dangerous Weapons or Instrumentalities for Purposes of Statutes

Aggravating Offenses such as Assault and Robbery. 67 A.L.R.6th 103.

CASE NOTES

ANALYSIS

Accomplice.
Conspiracy.
Double Jeopardy.
Elements.
Evidence.
Lesser Included Offense.
Lesser Included Offenses.
Representation of Deadly Weapon.
Sentence.

Accomplice.

There was sufficient evidence tending to connect defendant to an aggravated robbery and thus to corroborate accomplice testimony because surveillance video established the commission of the crime and an officer testified that defendant matched the description of a robber in the video based on his height and that the officer confirmed the truth of identifying information from a non-accomplice. *Smith*

v. State, 2012 Ark. App. 534, — S.W.3d — (2012).

Conspiracy.

Defendant committed an overt act in furtherance of a conspiracy to commit kidnapping, aggravated robbery, theft of property, and aggravated residential burglary because he took another person to his residence and showed the person the inside of the premises, discussed how to break in the residence and how to subdue his wife, and identified the property to be taken from the residence. *Winkler v. State*, 2012 Ark. App. 704, — S.W.3d —, 2012 Ark. App. LEXIS 825 (Dec. 12, 2012).

Double Jeopardy.

Trial court did not err in determining that consecutive sentencing for aggravated robbery, under subdivision (a)(1) of this section, first-degree terroristic threatening, § 5-13-301(a)(1)(A), and second-de-

gree battery, § 5-13-202(a)(2), did not violate the prohibition against double jeopardy in Ark. Const. Art. 2, § 8 and the Fifth Amendment because neither first-degree terroristic threatening nor second-degree battery was a lesser-included offense of aggravated robbery since both crimes required proof of additional facts not required by aggravated robbery; the offense of first-degree terroristic threatening requires the elements of threatening to cause the death of the victim and the purpose of terrorizing the victim, and a conviction for second-degree battery requires proof of purposely causing physical injury to the victim. *Walker v. State*, 2012 Ark. App. 61, — S.W.3d — (2012).

Elements.

Although defendant shot the victim three times as the result of an inadvertent collision with the victim as the victim attempted to run, actual physical force was not required to convict defendant of aggravated robbery. His possession of a gun and his threat to employ the gun were sufficient to support his conviction under § 5-12-102 and this section. *Ali v. State*, 2011 Ark. App. 758, — S.W.3d — (2011).

Evidence.

Defendant's concession that defendant participated in an aggravated robbery presented adequate grounds to support defendant's conviction for capital-felony murder; it was patently clear that the victim was killed in furtherance of an aggravated robbery that was planned and executed by defendant. *Whiteside v. State*, 2011 Ark. 371, — S.W.3d — (2011).

Defendant's conviction for capital-felony murder under § 5-10-101(a)(1) and subdivision (a)(3) of this section was appropriate because the evidence was sufficient. The last number dialed on the victim's cellular phone was to a phone registered to defendant and a fellow prisoner testified that defendant confessed to selling drugs to the victim, robbing and shooting him, and then leaving him on the road. *Dixon v. State*, 2011 Ark. 450, — S.W.3d — (2011).

Defendant's convictions for first-degree murder and aggravated robbery, in violation of §§ 5-10-102(a) and 5-3-201 and subsection (a) of this section, were supported by sufficient evidence, as the evidence showed that defendant was armed

with a deadly weapon for the purpose of committing the theft of a cab driver, that defendant threatened the driver, and that the driver was shot in the struggle over the gun. *Garr v. State*, 2011 Ark. App. 509, — S.W.3d — (2011).

Appellant's convictions for aggravated robbery, aggravated residential burglary, and misdemeanor fleeing were affirmed where a witness testified that appellant pointed a sawed-off shotgun at his head, which would necessarily constitute proof that appellant was "armed with a deadly weapon"; the testimony of one eyewitness was sufficient to sustain a conviction. *Riley v. State*, 2011 Ark. App. 511, — S.W.3d — (2011).

Evidence was sufficient to sustain defendant's aggravated robbery conviction because he brandished a weapon, which was a communicated threat, and it was done while defendant was essentially asking if the victim had anything of value. The fact that defendant did not actually take anything else from the victim while in possession of the firearm was not fatal to his conviction. *Butler v. State*, 2011 Ark. App. 708, — S.W.3d — (2011).

Evidence was sufficient to sustain defendant's convictions for capital murder and aggravated robbery because defendant drove his accomplice to the victim's house, defendant admitted to hitting the victim over the head, and the evidence illustrated he wanted to harm the victim because he did it again after he stated that the victim was not fazed. Additionally, the victim's wallet was taken from the house. *Laswell v. State*, 2012 Ark. 201, — S.W.3d — (2012).

There was sufficient evidence to sustain an aggravated robbery conviction under this section because there was a verbal representation in a note; there was no requirement that the threat of physical harm be made directly or indirectly, only that physical force be immediately threatened, however the threat was communicated. *Walden v. State*, 2012 Ark. App. 307, — S.W.3d — (2012).

Trial court did not err in denying defendant's motion for a directed verdict on an aggravated robbery charge, in violation of subdivisions (a)(1) and (2) of this section, because substantial evidence supported the conviction; according to defendant's own statement to the police, defendant participated in the planning of the rob-

bbery by driving accomplices around town in order to case possible bank targets. *Nickelson v. State*, 2012 Ark. App. 363, — S.W.3d — (2012).

Lesser Included Offense.

Trial court did not err in failing to give a jury an instruction on simple robbery, which was a lesser-included offense of aggravated robbery, in violation of subdivisions (a)(1) and (2) of this section, because defendant essentially argued that defendant did not commit any offense at all; hence, there was no rational basis for the giving of a lesser-included offense instruction. *Nickelson v. State*, 2012 Ark. App. 363, — S.W.3d — (2012).

Jury instruction on the lesser-included offense of attempted aggravated robbery was not warranted because there was no evidence of the offense of attempt under § 5-3-201(a)(2); when appellant stormed out of a retail store's stockroom brandishing a gun and pointing it employees, he actually completed the offense of aggravated robbery. *Thomas v. State*, 2012 Ark. App. 466, — S.W.3d — (2012).

Lesser Included Offenses.

Counsel complied with Ark. Sup. Ct. & Ct. App. R. 4-3(k), and appellant's appeal from his aggravated robbery conviction and sentence lacked merit because (1) the sufficiency of the evidence was not preserved for appellate review as counsel's motion for directed verdict failed to state with specificity the deficiency in the state's evidence, in contravention of Ark. R. Crim. P. 33.1; (2) there was no merit to appellant's chain-of-custody argument to the items found in his car pursuant to a search warrant as there was no evidence of tampering presented, and there was testimony that the items were logged into evidence and remained in the evidence room until the trial; (3) it was undisputed

that an armed robbery took place under subdivision (a)(1) of this section, so it was not an error to refuse to give an instruction on the lesser-included offense of robbery under § 5-12-102(a); and (4) appellant could not raise an ineffective assistance of counsel claim or challenge the qualifications of jurors for the first time on appeal. *Mace v. State*, 2012 Ark. App. 420, — S.W.3d — (2012).

Representation of Deadly Weapon.

Defendant's conviction for aggravated robbery, in violation of subdivision (a)(2) of this section, was supported by the evidence because, based on the victim's testimony, the jury could have inferred that the victim believed defendant was showing a second victim some sort of weapon during the bank robbery. *Feuget v. State*, 2012 Ark. App. 182, — S.W.3d — (2012).

Sentence.

Denial of writ of habeas corpus was proper, because life imprisonment for aggravated robbery was within the statutory range, irrespective of any enhancement as a habitual offender, and a sentence that was within the prescribed range was not illegal. *Goins v. Norris*, 2012 Ark. 192, — S.W.3d — (2012).

In an aggravated robbery case, a trial court did not abuse its discretion by admitting evidence at sentencing of appellant's participation in a prior robbery; it was of no consequence that appellant had not yet been convicted in the robbery at issue. As to relevance, the fact that appellant was an active participant in two robberies, just days apart and committed in nearly the same fashion, was relevant character evidence and was evidence of aggravated circumstances showing his propensity to engage in similar criminal conduct. *Thomas v. State*, 2012 Ark. App. 466, — S.W.3d — (2012).

CHAPTER 13
ASSAULT AND BATTERY

SUBCHAPTER 2 — OFFENSES GENERALLY

5-13-201. Battery in the first degree.

RESEARCH REFERENCES

ALR. Parts of Human Body, other than Feet, as Deadly or Dangerous Weapons or Instrumentalities for Purposes of Statutes	Aggravating Offenses such as Assault and Robbery. 67 A.L.R.6th 103.
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CASE NOTES

Evidence. Defendant, while in a drunken rage, intentionally shot an unarmed person who was 15 feet away and trying to help calm him; the evidence was sufficient for the jury to conclude that defendant in-	tended to shoot the victim and cause her harm, rather than to defend himself. Stocker v. State, 2012 Ark. App. 624, — S.W.3d —, 2012 Ark. App. LEXIS 753 (Nov. 7, 2012).
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5-13-202. Battery in the second degree.

RESEARCH REFERENCES

ALR. Parts of Human Body, other than Feet, as Deadly or Dangerous Weapons or Instrumentalities for Purposes of Statutes	Aggravating Offenses such as Assault and Robbery. 67 A.L.R.6th 103.
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CASE NOTES

ANALYSIS

Crime of Violence. Evidence. Lesser Included Offenses. Separate Offenses. Crime of Violence. Defendant's sentence as a career-offender under U.S. Sentencing Guidelines Manual § 4B1.1 was vacated because a district court erred by failing to apply the modified categorical approach to determine whether defendant's prior conviction for second-degree battery in violation of subsection (a) of this section was for a crime of violence. United States v. Dawn, — F.3d —, 2012 U.S. App. LEXIS 13218 (8th Cir. June 28, 2012).	waived a challenge to the sufficiency of the evidence supporting his conviction where he did not argue in his motions for directed verdict that an element of second-degree battery was not proven. Chestang v. State, 2012 Ark. App. 222, — S.W.3d — (2012). Defendant's conviction for second-degree battery, in violation of subdivision (a)(4)(C) of this section, was supported by the evidence because the number of bruises on his girlfriend's 23-month-old son and the unusual force necessary to cause them, as testified to by an emergency room pediatrician, provided proof that he knowingly caused physical injury under § 5-2-202(2)(B). Hahn v. State, 2012 Ark. App. 297, — S.W.3d — (2012).
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Evidence. Defendant convicted of the lesser-included offense of second-degree battery	Substantial evidence supported a juvenile's second-degree battery disposition, in violation of § subdivisions (a)(1)-(3) of this section, based on accomplice liability
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because a codefendant testified that the juvenile solicited and encouraged the plan to beat her boyfriend, who she suspected of cheating; the juvenile could be found guilty of the conduct of her accomplices who threw the punches. *L.C. v. State*, 2012 Ark. App. 666, — S.W.3d —, 2012 Ark. App. LEXIS 782 (Nov. 28, 2012).

Lesser Included Offenses.

To the extent that defendant convicted of second-degree battery attempted to argue that the jury should have been instructed on third-degree battery as a lesser-included offense because the jury could have rationally found him to have recklessly caused the injuries to the victim, his argument was not preserved, because although he proffered an instruction on third-degree battery based on the first definition of third-degree battery in § 5-13-203(a), which involved purposely causing physical injury, there was no indication that he requested an instruction based on the second definition in the statute, which involved recklessness. Defendant was thus procedurally barred from raising an argument based on an element

of recklessness. *Lytle v. State*, 2012 Ark. App. 246, — S.W.3d — (2012).

Separate Offenses.

Trial court did not err in determining that consecutive sentencing for aggravated robbery, § 5-12-103(a)(1), first-degree terroristic threatening, § 5-13-301(a)(1)(A), and second-degree battery, under subdivision (a)(2) of this section, did not violate the prohibition against double jeopardy in Ark. Const. Art. 2, § 8 and the Fifth Amendment because neither first-degree terroristic threatening nor second-degree battery was a lesser-included offense of aggravated robbery since both crimes required proof of additional facts not required by aggravated robbery; the offense of first-degree terroristic threatening requires the elements of threatening to cause the death of the victim and the purpose of terrorizing the victim, and a conviction for second-degree battery requires proof of purposely causing physical injury to the victim. *Walker v. State*, 2012 Ark. App. 61, — S.W.3d — (2012).

Cited: *Ross v. State*, 2012 Ark. App. 243, — S.W.3d — (2012).

5-13-203. Battery in the third degree.

RESEARCH REFERENCES

ALR. Parts of Human Body, other than Feet, as Deadly or Dangerous Weapons or Instrumentalities for Purposes of Statutes

Aggravating Offenses such as Assault and Robbery. 67 A.L.R.6th 103.

CASE NOTES

ANALYSIS

Evidence.

Lesser Included Offenses.

Evidence.

Trial court's finding that defendant violated the conditions of his suspended sentence by committing third-degree battery under subdivision (a)(1) of this section was not clearly against the preponderance of the evidence, because two witnesses testified that defendant struck the victim multiple times in the face, causing cuts to his mouth and significant bleeding. *Knotts v. State*, 2012 Ark. App. 121, — S.W.3d — (2012).

Lesser Included Offenses.

To the extent that defendant convicted of second-degree battery attempted to argue that the jury should have been instructed on third-degree battery as a lesser-included offense because the jury could have rationally found him to have recklessly caused the injuries to the victim, his argument was not preserved, because although he proffered an instruction on third-degree battery based on the first definition of third-degree battery in subsection (a) of this section, which involved purposely causing physical injury, there was no indication that he requested an instruction based on the second definition in the statute, which involved reck-

lessness. Defendant was thus procedurally barred from raising an argument based on an element of recklessness. Lytle

v. State, 2012 Ark. App. 246, — S.W.3d — (2012).

5-13-204. Aggravated assault.

CASE NOTES

ANALYSIS

Acts Constituting Assault.
Evidence.
Intent.

Acts Constituting Assault.

Defendant's conviction for aggravated assault was proper because there was evidence that defendant's conduct created a substantial risk of serious physical injury, as defined in § 5-1-102(21); defendant hit the victim with the butt of a pistol with sufficient force to knock the victim down, breaking facial bones and causing the victim's eye to swell shut. Pitts v. State, 2012 Ark. App. 228, — S.W.3d — (2012).

Evidence.

Although the circuit court erred in allowing the results of defendant's blood-alcohol test into evidence since the state failed to provide evidence that the blood was drawn by a physician or a person acting under the direction and supervision of a physician as required by this section, defendant was properly convicted of negligent homicide in violation of § 5-

10-105 and aggravated assault in violation of this section because there was overwhelming evidence of defendant's intoxication; while the only evidence regarding the concentration of alcohol in defendant's blood came from the blood test, there was sufficient evidence at trial to support defendant's conviction on the alternative theory that defendant negligently caused the victim's death as a result of operation of a motor vehicle while intoxicated. Bates v. State, 2011 Ark. App. 446, — S.W.3d — (2011).

Intent.

Substantial evidence supported a finding that defendant had the required purpose for aggravated assault when he discharged a gun in the direction of a step that was three steps down from where the victim was standing. Defendant's explanation of the gun accidentally firing did not match the physical evidence of bullet fragments found near a pock mark on the first step to the front porch and both the victim (an officer who had not identified himself) and defendant being wounded. Montalvo v. State, 2012 Ark. App. 119, — S.W.3d — (2012).

5-13-206. Assault in the second degree.

CASE NOTES

Evidence.

Where defendant, a police officer, was charged with second-degree assault for choking an arrestee during the booking process, assuming that a special agent of the state police was qualified as an expert to testify as to the appropriate charging

decision, the proffered testimony was properly excluded as it would have invaded the role of the jury as to the determination of the ultimate issue. Clark v. State, 2012 Ark. App. 496, — S.W.3d — (2012).

5-13-211. Aggravated assault upon a certified law enforcement officer or an employee of a correctional facility.**CASE NOTES****Defense.**

Motion to dismiss was properly denied with respect to aggravated assault on a correctional facility employee under subsection (a) of this section and first-degree terroristic threatening because voluntary intoxication was not a defense. Also, a jury could have reasonably concluded that ap-

pellant purposely caused his saliva to come into contact with an officer; the trial court found that the act of purposefully expelling bodily fluid onto the officer's person satisfied the "potential danger" requirement of the assault offense. *Green v. State*, 2012 Ark. App. 315, — S.W.3d — (2012).

SUBCHAPTER 3 — TERRORISM**5-13-301. Terroristic threatening.****CASE NOTES****ANALYSIS****Evidence.**

—Sufficient.

Jury Instructions.

Separate Offenses.

Evidence.

Evidence was sufficient to convict defendant of terroristic threatening because a dispatcher testified that the dispatcher received a 911 call from defendant's wife regarding a domestic disturbance; the wife said that defendant choked her and threatened to kill her and "take her out." *Mathis v. State*, 2012 Ark. App. 285, — S.W.3d — (2012).

Notwithstanding testimony that the alleged victim of terroristic threatening was a heavy drinker whose personality and memory changed when she was under the influence, the jury was entitled to believe the victim's testimony that defendant threatened to kill her if she reported that he had raped her and that she was scared to report the crime due to defendant's threat, particularly where there was testimony by another that defendant had admitted to having threatened the victim that he would kill her if she told anyone about the rape. The believability of the victim was a function for the jury as the fact-finder, not the reviewing court. *Harris v. State*, 2012 Ark. App. 651, — S.W.3d —, 2012 Ark. App. LEXIS 765 (Nov. 14, 2012).

—Sufficient.

Defendant's convictions for residential burglary and terroristic threatening, in violation of § 5-39-201(a) and subdivision (b)(1) of this section were supported by sufficient evidence, as he entered his ex-wife residence with the intent or purpose of assaulting her or of threatening either her or her boyfriend. *Cash v. State*, 2011 Ark. App. 493, — S.W.3d — (2011).

Jury Instructions.

In defendant's trial for rape and terroristic threatening in the first degree in violation of subdivision (a)(1)(A) of this section, in which the victim testified that after defendant raped her for the first time, he told her if she said anything about the rape he would kill her, the evidence did not authorize a jury instruction on the offense of terroristic threatening in the second degree. *Green v. State*, 2012 Ark. 19, — S.W.3d — (2012).

Separate Offenses.

Trial court did not err in determining that consecutive sentencing for aggravated robbery, § 5-12-103(a)(1), first-degree terroristic threatening, under subdivision (a)(1)(A) of this section, and second-degree battery, § 5-13-202(a)(2), did not violate the prohibition against double jeopardy in Ark. Const. Art. 2, § 8 and the Fifth Amendment because neither first-degree terroristic threatening nor second-degree battery was a lesser-included offense of aggravated robbery since both

crimes required proof of additional facts not required by aggravated robbery; the offense of first-degree terroristic threatening requires the elements of threatening to cause the death of the victim and the

purpose of terrorizing the victim, and a conviction for second-degree battery requires proof of purposely causing physical injury to the victim. *Walker v. State*, 2012 Ark. App. 61, — S.W.3d — (2012).

5-13-310. Terroristic act.

CASE NOTES

ANALYSIS

Sentencing.
Sufficiency of Evidence.

Sentencing.

Where defendant was convicted of multiple offenses and sentenced to 240 months for committing a terroristic act under this section and 192 months for domestic battery under § 5-26-303(a)(3), the enhancement of his sentence on both charges by 144 months pursuant to § 16-90-120 did not result in his sentence being enhanced twice for using a deadly weapon because the use of a firearm was not an element the prosecution had to prove to obtain his convictions. *King v. State*, 2012 Ark. App. 94, — S.W.3d — (2012).

Sufficiency of Evidence.

Shot fired at the victims' house, the intruders' clear intent to rob the victims,

the earlier threat to kill the victims, and the testimony that one of the intruders turned around and started shooting while he was being chased out of the house was sufficient to convict defendant of committing terroristic acts under subdivision (a)(2) of this section. *Davis v. State*, 2012 Ark. App. 362, — S.W.3d — (2012).

Evidence was sufficient to sustain defendant's conviction for committing a terroristic act because, after initially shooting at the victim, defendant fired his weapon two more times as the victim was in the process of shutting his door. The natural and probable consequences of defendant's action in continuing to shoot as the door was closing resulted in the bullets striking the trailer, even though defendant aimed with the purpose of causing personal injury. *Wells v. State*, 2012 Ark. App. 596, — S.W.3d —, 2012 Ark. App. LEXIS 718 (Oct. 24, 2012).

CHAPTER 14
SEXUAL OFFENSES

SUBCHAPTER 1 — GENERAL PROVISIONS

5-14-101. Definitions.

CASE NOTES

ANALYSIS

Evidence.
Forcible Compulsion.
Penetration.
Physically Helpless.
Sexual Contact.
Sexual Gratification.

Evidence.

Evidence was sufficient to sustain defendant's rape conviction because the

child testified that defendant put his finger inside her body on what she described as her "private part," and to prove rape, the state was required to show that there was penetration, however slight, of the labia majora of the victim. *McLish v. State*, 2012 Ark. App. 275, — S.W.3d — (2012).

Substantial evidence supported defendant's conviction for rape in violation of § 5-14-103(a)(3)(A), because the child victim testified that when she was seven

years old, defendant forced her onto the bed, touched her chest, and sexually penetrated her vagina under subdivision (1)(B) of this section. Therefore, the circuit court properly denied his motion for directed verdict. *Fields v. State*, 2012 Ark. 353, — S.W.3d — (2012).

Victim's testimony relating to her grade level and place of residency at the time of assaults was sufficient proof for a jury to determine when certain assaults occurred under subdivision (1)(B) of this section and § 5-14-103(a)(3)(A). *Mashburn v. State*, 2012 Ark. App. 621, — S.W.3d —, 2012 Ark. App. LEXIS 749 (Nov. 7, 2012).

Forcible Compulsion.

Because the only rulings adverse to defendant were the denials of defendant's motions for a directed verdict, and because the victim's testimony that defendant hit, choked, and raped the victim was supported by physical evidence, there was substantial evidence under subdivision (2) of this section and § 5-14-103 to support defendant's conviction. *Russell v. State*, 2011 Ark. App. 479, — S.W.3d — (2011).

Penetration.

Defendant's conviction for raping his daughter under § 5-14-103(a)(4)(A)(i) was appropriate because the evidence was sufficient. The minor victim's testimony constituted substantial evidence that defendant had raped her and a doctor had testified that the daughter's examination revealed findings consistent with penetration under subdivision (11) of this section. *Vance v. State*, 2011 Ark. 392, — S.W.3d — (2011).

Defendant's confession that he had his penis out and touched his five-year-old niece's mouth with it, and that she might have opened her mouth, coupled with the child's statement to her mother within seconds or minutes of the incident that defendant had put his pee-pee in her mouth, was sufficient to convict defendant of rape. *Davis v. State*, 2011 Ark. App. 686, — S.W.3d — (2011).

Motion for a directed verdict as to one rape charge against appellant relating to penetration by a penis was insufficient to challenge the sufficiency of a conviction for rape by digital penetration under Ark. R. Crim. P. 33.1(c); even if the issue was preserved, a victim's testimony was sufficient and substantial evidence to support

a conviction. *Clayton v. State*, 2012 Ark. App. 199, — S.W.3d — (2012).

Victim's oral cavity does not have to be fully entered in order for penetration to occur under subdivision (1)(A) of this section; rather, slight penetration, such as that of the lips, can be sufficient to constitute rape. Therefore, a directed verdict was properly denied because there was sufficient evidence of penetration under subdivision (1)(A) where the victim testified that appellant pushed her head down on his penis, which touched her lips; appellant was unable to push it further in the victim's mouth because she had her teeth clenched. *Henderson v. State*, 2012 Ark. App. 485, — S.W.3d — (2012).

Suspended sentence was properly revoked because the evidence showed that appellant committed rape under § 5-14-103(a)(1); penetration was shown by the circumstantial evidence where the victim sustained wounds to her body, appellant admitted to having intercourse, and debris was found inside of the victim's vagina. Moreover, appellant's semen was found on the victim's inner thigh. *Edwards v. State*, 2012 Ark. App. 551, — S.W.3d — (2012).

Physically Helpless.

Substantial evidence existed to revoke defendant's suspended sentence for sale of cocaine based on a finding that he committed a new criminal offense because his sister-in-law testified defendant sexually assaulted her after she consumed alcohol and fell asleep; therefore, she was physically helpless for purposes of subdivision (7)(A) of this section. *Wilson v. State*, 2012 Ark. App. 566, — S.W.3d — (2012).

Sexual Contact.

Evidence was sufficient to convict defendant of second-degree sexual assault under § 5-14-125(a)(3) because the child victim told a detective about a magic thumb game she played with defendant, pointed to the genitalia area of an anatomically correct doll when describing the magic thumb, and said that when it got big, she made it little again. *King v. State*, 2012 Ark. App. 253, — S.W.3d — (2012).

Revocation of probation was proper, because the appellate court was bound to defer to the trial court on issues of credibility, and the victim's testimony established each of the elements for committing

second-degree sexual assault under subdivision (a)(1) of this section, when she indicated that the petitioner had her up against the wall and touched her buttocks and vagina. *Boykins v. State*, 2012 Ark. App. 263, — S.W.3d — (2012).

Trial court's delinquency adjudications finding that a juvenile committed three acts of sexual assault in the second degree, in violation of § 5-14-125(a)(1), were appropriate because the trial court found that the testimony of each of the three victims as to the juvenile's making sexual contact with them, as defined by subsection (10) of this section, by inappropriately touching the victims in separate incidents was credible, and because the uncorroborated testimony of each of the victims of a sexual offense constituted sufficient evi-

dence to support a finding of guilt. *D.D. v. State*, 2012 Ark. App. 637, — S.W.3d —, 2012 Ark. App. LEXIS 747 (Nov. 7, 2012).

Sexual Gratification.

Credibility arguments relating to a conviction for second-degree sexual assault were not preserved for appellate review because appellant presented different arguments at the trial court level; appellant argued that the charge was a lesser-included offense of rape and that the element of sexual gratification was not proven. Arguments not raised at trial were not addressed for the first time on appeal, and appellant was not able to change the grounds for his directed verdict motion on appeal. *Clayton v. State*, 2012 Ark. App. 199, — S.W.3d — (2012).

5-14-102. In general.

CASE NOTES

Affirmative Defenses.

Court rejected petitioner's contention that the reasonable mistake of age defense in subsection (d) of this section violated the Due Process Clause by shifting the burden of proof on an essential element to the defendant; if the Arkansas statute employed a strict-liability standard concerning the victim's age, then the state retained the burden of proving all

elements of the offense, and no further facts are either presumed or inferred in order to constitute the crime (the defendant's reasonable ignorance of the victim's age would therefore mitigate the offense, not rebut a presumed element). *Neely v. McDaniel*, 677 F.3d 346 (8th Cir. 2012), rehearing denied, — F.3d —, 2012 U.S. App. LEXIS 12159 (8th Cir. Ark. June 14, 2012).

5-14-103. Rape.

CASE NOTES

ANALYSIS

- Directed Verdict.
- Evidence.
- Indictment or Information.
- Lesser Included Offenses.
- Penetration.
- Sentencing.

Directed Verdict.

Sufficient evidence supported the denial of a directed verdict motion on defendant's rape charge, even though: (1) the victim had a prior felony conviction and had consumed multiple beers and cocaine on the night of the incident; (2) the victim willingly went to defendant's house and did not contact police because of outstand-

ing warrants for her arrest; (3) there was no bruising on the victim; and that no hair from defendant was found by the forensic serologist; (4) a third person could not be excluded from the vaginal swab; and (5) intercourse could not be conclusively shown between the victim and defendant from the swab. *Williams v. State*, 2011 Ark. App. 675, — S.W.3d — (2011).

Evidence.

Defendant's conviction for raping his daughter under subdivision (a)(4)(A)(i) of this section was appropriate because the evidence was sufficient. The minor victim's testimony constituted substantial evidence that defendant had raped her and a doctor had testified that the daugh-

ter's examination revealed findings consistent with penetration under § 5-14-101(11). *Vance v. State*, 2011 Ark. 392, — S.W.3d — (2011).

Because the only rulings adverse to defendant were the denials of defendant's motions for a directed verdict, and because the victim's testimony that defendant hit, choked, and raped the victim was supported by physical evidence, there was substantial evidence under § 5-14-101(2) and this section to support defendant's conviction. *Russell v. State*, 2011 Ark. App. 479, — S.W.3d — (2011).

Motion for a directed verdict as to one rape charge against appellant relating to penetration by a penis was insufficient to challenge the sufficiency of a conviction for rape by digital penetration under Ark. R. Crim. P. 33.1(c); even if the issue was preserved, a victim's testimony was sufficient and substantial evidence to support a conviction. *Clayton v. State*, 2012 Ark. App. 199, — S.W.3d — (2012).

Evidence was sufficient to sustain defendant's rape conviction because the child testified that defendant put his finger inside her body on what she described as her "private part," and to prove rape, the state was required to show that there was penetration, however slight, of the labia majora of the victim. *McLish v. State*, 2012 Ark. App. 275, — S.W.3d — (2012).

At defendant's trial for rape under this section, the circuit court did not abuse its discretion in determining that evidence of his prior convictions for carnal abuse of a child, arson, terroristic threatening, and failure to register as a sex offender were admissible under Ark. R. Evid. 609 to impeach defendant. The prior convictions were highly probative of his credibility, which was at issue because he chose to testify at trial and claimed in defense that the victim offered to pay him to have sex with her. *Jordan v. State*, 2012 Ark. 277, — S.W.3d — (2012).

Substantial evidence supported defendant's conviction for rape under subdivision (a)(3)(A) of this section, because the child victim testified that when she was seven years old, defendant forced her onto the bed, touched her chest, and sexually penetrated her. Therefore, the circuit court properly denied his motion for directed verdict. *Fields v. State*, 2012 Ark. 353, — S.W.3d — (2012).

At defendant's trial for rape under subdivision (a)(3)(A) of this section, the circuit court did not abuse its discretion in admitting testimony from three witnesses who had prior sexual contact with defendant pursuant to the pedophile exception to Ark. R. Evid. 404(b). Like the victim, the witnesses were young children at the time they had an intimate relationship with defendant. *Fields v. State*, 2012 Ark. 353, — S.W.3d — (2012).

In defendant's prosecution for rape of a physically helpless victim who was unable to consent, defendant's prior conviction of lewd molestation of a child was admissible under the pedophile exception to Ark. R. Evid. 404(b) as probative of defendant's motive, intent, and plan to assault the victim because, in each case, defendant placed himself in a position of authority, isolated the victim from parents or other adults while engaging the victim in a favored activity, removed the victim's pants, performed oral sex on the victim, and then told the victim not to tell and, in both cases, defendant cultivated a relationship close in acquaintance based on common interests and enjoyed a position of authority over the victims. The differences in age and gender between the two victims did not render the pedophile exception inapplicable; nor did the passage of 17 years between the events render the earlier event too remote to be admissible under Rule 404(b) because defendant's prior conviction, despite its age, tended to prove defendant's depraved sexual instinct. *Craig v. State*, 2012 Ark. 387, — S.W.3d — (2012).

Notwithstanding testimony that the alleged rape victim was a heavy drinker whose personality and memory changed when she was under the influence, the jury was entitled to believe the victim's testimony describing an assault and act of sexual intercourse by defendant that continued after she told him to quit, particularly where there was testimony by others that defendant admitted he had sexual intercourse with the victim and admitted he had raped her. The believability of the victim was a function for the jury as the fact-finder, not the reviewing court. *Harris v. State*, 2012 Ark. App. 651, — S.W.3d —, 2012 Ark. App. LEXIS 765 (Nov. 14, 2012).

Victim's testimony relating to her grade level and place of residency at the time of

assaults was sufficient proof for a jury to determine when certain assaults occurred under subdivision (a)(3)(A) of this section and § 5-14-101(1)(B). *Mashburn v. State*, 2012 Ark. App. 621, — S.W.3d —, 2012 Ark. App. LEXIS 749 (Nov. 7, 2012).

Indictment or Information.

Denial of a continuance to a defendant did not violate due process; although the information was amended the day before trial from a charge of rape of someone less than 14 years old by forcible compulsion to rape by forcible compulsion in violation of subdivision (a)(1) of this section, the nature of the crime charged did not change, pursuant to § 16-85-407(b). *Green v. State*, 2012 Ark. 19, — S.W.3d — (2012).

Lesser Included Offenses.

In a criminal trial, the circuit court did not abuse its discretion in denying defendant's request to instruct the jury that second-degree sexual assault under § 5-14-125(a)(3) was a lesser offense included in rape of a person less than fourteen years of age, as defined in subdivision (a)(3)(A) of this section, because the offense contained two elements not included in rape: defendant's age and marital status. Therefore, second-degree sexual assault was not a lesser offense included in rape. *Webb v. State*, 2012 Ark. 64, — S.W.3d — (2012).

Penetration.

Defendant's confession that he had his penis out and touched his five-year-old niece's mouth with it, and that she might have opened her mouth, coupled with the child's statement to her mother within seconds or minutes of the incident that defendant had put his pee-pee in her

mouth, was sufficient to convict defendant of rape. *Davis v. State*, 2011 Ark. App. 686, — S.W.3d — (2011).

Victim's oral cavity does not have to be fully entered in order for penetration to occur under § 5-14-101(1)(A); rather, slight penetration, such as that of the lips, can be sufficient to constitute rape. Therefore, a directed verdict was properly denied because there was sufficient evidence of penetration under § 5-14-101(1)(A) where the victim testified that appellant pushed her head down on his penis, which touched her lips; appellant was unable to push it further in the victim's mouth because she had her teeth clenched. *Henderson v. State*, 2012 Ark. App. 485, — S.W.3d — (2012).

Suspended sentence was properly revoked because the evidence showed that appellant committed rape under subdivision (a)(1) of this section; penetration was shown by the circumstantial evidence where the victim sustained wounds to her body, appellant admitted to having intercourse, and debris was found inside of the victim's vagina. Moreover, appellant's semen was found on the victim's inner thigh. *Edwards v. State*, 2012 Ark. App. 551, — S.W.3d — (2012).

Sentencing.

Where defendant pled guilty to rape and elected to be sentenced by a jury in a bifurcated proceeding, the trial court erred in admitting a videotaped statement of the child rape victim during the sentencing proceeding, because this violated defendant's right of confrontation under U.S. Const. Amend. VI and Ark. Const. Art. II, § 10. *Vankirk v. State*, 2011 Ark. 428, — S.W.3d — (2011).

5-14-110. Sexual indecency with a child.

CASE NOTES

ANALYSIS

Construction.
Evidence.

Construction.

"Solicits" has an ordinary and usually accepted meaning in common language that can be drawn from dictionaries, and men may conduct themselves so as to

avoid that which is forbidden; the statute is not impermissibly vague in all of its applications. *Neely v. McDaniel*, 677 F.3d 346 (8th Cir. 2012), rehearing denied, — F.3d —, 2012 U.S. App. LEXIS 12159 (8th Cir. Ark. June 14, 2012).

By criminalizing the solicitation of minors to engage in sexual activity, this section targets primarily, if not exclusively, illicit activity within the state's

power to regulate; the court rejected petitioner's overbreadth challenge and concluded that whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied. *Neely v. McDaniel*, 677 F.3d 346 (8th Cir. 2012), rehearing denied, — F.3d —, 2012 U.S. App. LEXIS 12159 (8th Cir. Ark. June 14, 2012).

Court rejected petitioner's contention that the reasonable mistake of age defense in § 5-14-102(d) violated the Due Process Clause by shifting the burden of proof on an essential element to the defendant; if the Arkansas statute employed a strict-liability standard concerning the victim's age, then the state retained the burden of proving all elements of the offense, and no further facts are either presumed or inferred in order to constitute the crime (the defendant's reasonable ignorance of the victim's age would therefore mitigate the offense, not rebut a presumed element). *Neely v. McDaniel*, 677 F.3d 346 (8th Cir. 2012), rehearing denied, — F.3d —, 2012 U.S. App. LEXIS 12159 (8th Cir. Ark. June 14, 2012).

This section prohibits the solicitation of conduct that is already criminal under Arkansas law, and offers to engage in illegal transactions enjoy no First Amendment protection. *Neely v. McDaniel*, 677 F.3d 346 (8th Cir. 2012), rehearing denied, — F.3d —, 2012 U.S. App. LEXIS 12159 (8th Cir. Ark. June 14, 2012).

Evidence.

Evidence defendant initiated the first episode of sexual intercourse and provided transportation to his home and other locations so intercourse could take place supported a finding defendant solicited the victim and supported defendant's conviction for sexual indecency with a child. *Halliday v. State*, 2011 Ark. App. 544, — S.W.3d — (2011).

Because an eight-year-old child victim's testimony was enough to support a conviction, there was sufficient evidence to support defendant's convictions for sexual indecency with a child and second-degree sexual assault under subdivision (a)(2)(A) of this section and § 5-14-125(a)(3), respectively. *Newton v. State*, 2012 Ark. App. 91, — S.W.3d — (2012).

5-14-112. Indecent exposure.

RESEARCH REFERENCES

ALR. Validity of State and Municipal Indecent Exposure Statutes and Ordinances. 71 A.L.R.6th 283.

5-14-124. Sexual assault in the first degree.

CASE NOTES

ANALYSIS

Evidence.
Illustrative Cases.

Evidence.

Finding that defendant held a position of trust or authority over the victim was supported by evidence that defendant picked the victim up and took the victim home from horse training and by testimony of the victim's father that defendant was helping the victim with riding and

learning about rodeo and that the father trusted defendant as the adult watching his daughter. *Halliday v. State*, 2011 Ark. App. 544, — S.W.3d — (2011).

Illustrative Cases.

In a case in which defendant was convicted of four counts of sexual assault of a minor, defendant fulfilled the role of temporary caretaker or person in a position of trust or authority under both this section and § 5-14-125, as defendant was in a position to care for the victim while the

victim was staying overnight in defendant's home. *Nelson v. State*, 2011 Ark. 429, — S.W.3d — (2011).

5-14-125. Sexual assault in the second degree.

CASE NOTES

ANALYSIS

Constitutionality.

Applicability.

Appellate Review.

Evidence.

Lesser Included Offense.

Constitutionality.

Subdivision (a)(6) of this section, as applied to a high school teacher who engaged in a consensual sexual relationship with an 18-year-old student, who was an adult under § 9-25-101(a), infringed on the teacher's fundamental right to privacy and was not the least restrictive method available for the promotion of the state's interest; therefore, it was unconstitutional. *Paschal v. State*, 2012 Ark. 127, — S.W.3d — (2012).

Applicability.

In a case in which defendant was convicted of four counts of sexual assault of a minor, defendant fulfilled the role of temporary caretaker or person in a position of trust or authority under both § 5-14-124 and this section, as defendant was in a position to care for the victim while the victim was staying overnight in defendant's home. *Nelson v. State*, 2011 Ark. 429, — S.W.3d — (2011).

Appellate Review.

Credibility arguments relating to a conviction for second-degree sexual assault were not preserved for appellate review because appellant presented different arguments at the trial court level; appellant argued that the charge was a lesser-included offense of rape and that the element of sexual gratification was not proven. Arguments not raised at trial were not addressed for the first time on appeal, and appellant was not able to change the grounds for his directed verdict motion on appeal. *Clayton v. State*, 2012 Ark. App. 199, — S.W.3d — (2012).

Evidence.

Because an eight-year-old child victim's testimony was enough to support a conviction, there was sufficient evidence to support defendant's convictions for sexual indecency with a child and second-degree sexual assault under § 5-14-110(a)(2)(A) and subdivision (a)(3) of this section, respectively. *Newton v. State*, 2012 Ark. App. 91, — S.W.3d — (2012).

Evidence was sufficient to convict defendant of second-degree sexual assault under subdivision (a)(3) of this section because the child victim told a detective about a magic thumb game she played with defendant, pointed to the genitalia area of an anatomically correct doll when describing the magic thumb, and said that when it got big, she made it little again. *King v. State*, 2012 Ark. App. 253, — S.W.3d — (2012).

Revocation of probation was proper, because the appellate court was bound to defer to the trial court on issues of credibility, and the victim's testimony established each of the elements for committing second-degree sexual assault under subdivision (a)(1) of this section, when she indicated that the petitioner had her up against the wall and touched her buttocks and vagina. *Boykins v. State*, 2012 Ark. App. 263, — S.W.3d — (2012).

Substantial evidence existed to revoke defendant's suspended sentence for sale of cocaine based on a finding that he committed a new criminal offense under subdivision (a)(2)(A) of this section, because his sister-in-law testified defendant sexually assaulted her while she was asleep and a police officer testified his DNA matched the sample taken from the victim. *Wilson v. State*, 2012 Ark. App. 566, — S.W.3d — (2012).

Trial court's delinquency adjudications finding that a juvenile committed three acts of sexual assault in the second degree, in violation of subdivision (a)(1) of this section, were appropriate because the

trial court found that the testimony of each of the three victims as to the juvenile's making sexual contact with them, as defined by § 5-14-101(10), by inappropriately touching the victims in separate incidents was credible, and because the uncorroborated testimony of each of the victims of a sexual offense constituted sufficient evidence to support a finding of guilt. *D.D. v. State*, 2012 Ark. App. 637, — S.W.3d —, 2012 Ark. App. LEXIS 747 (Nov. 7, 2012).

Lesser Included Offense.

In a criminal trial, the circuit court did not abuse its discretion in denying defen-

dant's request to instruct the jury that second-degree sexual assault under subdivision (a)(3) of this section was a lesser offense included in rape of a person less than fourteen years of age, as defined in § 5-14-103(a)(3)(A), because the offense contained two elements not included in rape: defendant's age and marital status. Therefore, second-degree sexual assault was not a lesser offense included in rape. *Webb v. State*, 2012 Ark. 64, — S.W.3d — (2012).

5-14-127. Sexual assault in the fourth degree.

CASE NOTES

Relationship with Other Laws.

Section 5-14-110 prohibits the solicitation of conduct that is already criminal under Arkansas law, and offers to engage in illegal transactions enjoy no First

Amendment protection. *Neely v. McDaniel*, 677 F.3d 346 (8th Cir. 2012), rehearing denied, — F.3d —, 2012 U.S. App. LEXIS 12159 (8th Cir. Ark. June 14, 2012).

SUBTITLE 3. OFFENSES INVOLVING FAMILIES, DEPENDENTS, ETC.

CHAPTER 26

OFFENSES INVOLVING THE FAMILY

SUBCHAPTER 3 — DOMESTIC BATTERING AND ASSAULT

5-26-303. Domestic battering in the first degree.

CASE NOTES

Sentencing.

Where defendant was convicted of multiple offenses and sentenced to 240 months for committing a terroristic act under § 5-13-310 and 192 months for domestic battery under subdivision (a)(3) of this section, the enhancement of his sentence on both charges by 144 months

pursuant to § 16-90-120 did not result in his sentence being enhanced twice for using a deadly weapon because the use of a firearm was not an element the prosecution had to prove to obtain his convictions. *King v. State*, 2012 Ark. App. 94, — S.W.3d — (2012).

5-26-304. Domestic battering in the second degree.

CASE NOTES

Sentence.

Trial court did not err in sentencing defendant after revoking his probation because defendant pleaded guilty to second-degree domestic battery, under this section, and third-degree domestic bat-

tery, under § 5-26-305, and his sentences of ten and six years, respectively, were sentences that could have been originally imposed for the offenses of which he was found guilty. *Jones v. State*, 2012 Ark. App. 69, — S.W.3d — (2012).

5-26-305. Domestic battering in the third degree.

CASE NOTES

Sentence.

Revocation of defendant's suspended imposition of sentence for two felony convictions was appropriate because the circuit court's finding that she committed third-degree domestic battering and thus violated the condition that she break no laws, was not clearly against the preponderance of the evidence. The testimony was sufficient to prove that, either purposefully or recklessly, she struck her nephew and caused him physical injury in the form of substantial pain under subsection (a) of this section and § 5-1-102(14).

Westbrook v. State, 2011 Ark. App. 615, — S.W.3d — (2011).

Trial court did not err in sentencing defendant after revoking his probation because defendant pleaded guilty to second-degree domestic battery, § 5-26-304, and third-degree domestic battery, under this section, and his sentences of ten and six years, respectively, were sentences that could have been originally imposed for the offenses of which he was found guilty. *Jones v. State*, 2012 Ark. App. 69, — S.W.3d — (2012).

5-26-306. Aggravated assault on a family or household member.

CASE NOTES

Evidence.

Evidence was sufficient to convict defendant of aggravated assault on a family or household member because a dispatcher testified that the dispatcher received a 911 call from defendant's wife reporting a

domestic disturbance; a deputy testified that the deputy noticed bruising on the wife's body and saw broken dishes and cabinets knocked off the walls. *Mathis v. State*, 2012 Ark. App. 285, — S.W.3d — (2012).

SUBCHAPTER 4 — NONSUPPORT

5-26-401. Nonsupport.

CASE NOTES

Double Jeopardy.

Defendant's prior contempt proceedings did not present a double-jeopardy bar to the state's prosecution for criminal nonsupport under this section because each time defendant failed to pay his child

support, he offended his ongoing duty to provide support; the state was not seeking to punish defendant for the acts of nonpayment for which he had already been punished, but rather, the state was attempting to penalize defendant for a vio-

lation of the statute for which he had not yet been punished. *Halpaine v. State*, 2011 Ark. 517, — S.W.3d — (2011).

CHAPTER 27

OFFENSES AGAINST CHILDREN OR INCOMPETENTS

SUBCHAPTER 2 — OFFENSES GENERALLY

5-27-205. Endangering the welfare of a minor in the first degree.

CASE NOTES

Illustrative Cases.

Defendant's conviction for endangering the welfare of a minor under this section was appropriate because the evidence was sufficient. Defendant fired a shotgun at the child's grandmother as the mother of defendant's child and the child stood approximately one foot away from the victim

behind a screen door on the front porch; according to the mother's testimony, defendant dragged her by the hair to the car while she held the infant, and once at the case, defendant then beat the mother. *Williams v. State*, 2011 Ark. 432, — S.W.3d — (2011).

5-27-210. Parental responsibility for student's firearm possession.

RESEARCH REFERENCES

ALR. Validity of Parental Responsibility Statutes and Ordinances Holding Par-

ents Liable for Criminal Acts of Their Children. 74 A.L.R.6th 181.

5-27-221. Permitting abuse of a minor.

CASE NOTES

Evidence.

Evidence was sufficient to convict a mother of violating this section and § 5-54-105 based on a shaken baby brain injury to her two-year-old daughter caused by the mother's boyfriend and other acts of abuse and neglect; the mother repeatedly insisted that the brain injury resulted in a fall from a bunk bed despite expert testimony that the injury could not have resulted from such a fall. *Sullivan v. State*, 2011 Ark. App. 576, — S.W.3d — (2011).

Defendant's conviction for permitting the abuse of her 23-month-old child by her boyfriend, in violation of subsection (a) of this section, was supported by the evidence because the medical evidence established that the child was covered with visible scars and older injuries that would have been apparent to a care giver; an older child testified to telling defendant of earlier instances of abuse, and defendant's only response was to deny the abuse. *Sullivan v. State*, 2012 Ark. 74, — S.W.3d — (2012).

5-27-227. Providing minors with tobacco products and cigarette papers — Purchase, use, or possession prohibited — Self-service displays prohibited — Placement of tobacco vending machines.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State and Local Laws Providing

for Civil Liability for Tobacco Sales or Distribution to Minors. 66 A.L.R.6th 315.

SUBCHAPTER 3 — ARKANSAS PROTECTION OF CHILDREN AGAINST EXPLOITATION ACT OF 1979

5-27-306. Internet stalking of a child.

CASE NOTES

ANALYSIS

Entrapment As Affirmative Defense. Evidence.

Entrapment As Affirmative Defense.

Defendant, who was convicted for internet stalking, should have been permitted to plead entrapment under § 5-2-209 as an affirmative defense while at the same time denying one or two elements of the crime, and therefore defendant’s conviction was reversed, because the doctrine requiring a defendant to admit to all the elements of a crime in order to plead entrapment could result in punishing a defendant who was merely entrapped; the doctrine could possibly punish a defendant for a serious crime for merely seeking to require the state to prove its case aside from offering an affirmative defense. *Smoak v. State*, 2011 Ark. 529, — S.W.3d — (2011).

Evidence.

Sufficient evidence showed that defendant, who was convicted of internet stalking under subdivision (a)(2) of this section, seduced, enticed, solicited, and lured a

person whom defendant chatted with online and believed to be a fifteen year-old girl, in an effort to arrange a meeting for sex because the transcript of the online chat and the testimony of the detective who posed as a fifteen year-old girl online showed that defendant made sex-related comments, asked for the person’s address, and told the person that defendant had condoms, which were found in defendant’s truck. *Smoak v. State*, 2011 Ark. 529, — S.W.3d — (2011).

There was sufficient evidence to convict defendant of internet stalking of a child in violation of this section, because he had a series of online chats with a police lieutenant representing himself as a fifteen-year-old female; defendant initiated a sexually explicit conversation, made plans to meet in person, and offered to teach the fifteen-year-old female a variety of sexual skills. There was sufficient evidence to prove that (1) defendant believed the person chatting online was age fifteen or younger; and (2) his purpose in meeting in person was to engage in sexual activity. *Todd v. State*, 2012 Ark. App. 626, — S.W.3d —, 2012 Ark. App. LEXIS 778 (Nov. 7, 2012).

SUBCHAPTER 4 — USE OF CHILDREN IN SEXUAL PERFORMANCES**5-27-403. Producing, directing, or promoting a sexual performance by a child.****RESEARCH REFERENCES**

ALR. Construction and Application of U.S. Sentencing Guideline § 2G1.3(b)(3), Providing Two-Level Enhancement for Use of Computer to Persuade, Induce, Entice, Coerce, or Facilitate the Travel of, Minor to Engage in Prohibited Sexual Conduct. 58 A.L.R. Fed. 2d 1.

SUBCHAPTER 6 — COMPUTER CRIMES AGAINST MINORS**5-27-605. Computer exploitation of a child.****RESEARCH REFERENCES**

ALR. Construction and Application of U.S. Sentencing Guideline § 2G1.3(b)(3), Providing Two-Level Enhancement for Use of Computer to Persuade, Induce, Entice, Coerce, or Facilitate the Travel of, Minor to Engage in Prohibited Sexual Conduct. 58 A.L.R. Fed. 2d 1.

SUBTITLE 4. OFFENSES AGAINST PROPERTY**CHAPTER 36****THEFT****SUBCHAPTER 1 — GENERAL PROVISIONS****5-36-101. Definitions.****RESEARCH REFERENCES**

ALR. What is "Property of Another" Within Statute Proscribing Larceny, Theft, or Embezzlement of Property of Another. 57 A.L.R.6th 445.

CASE NOTES**Value.**

Defendant's conviction for theft of property under § 5-36-103(a)(1) was appropriate because the state's proof that the items he stole had a value in excess of \$500 was adequate, under subdivision (12)(A)(i) of this section. The items were mostly purchased less than a year before the burglary, the purchase price so greatly exceeded the \$500 statutory value threshold, and thus, the victim's testimony constitutes substantial evidence of value.

Vault v. State, 2012 Ark. App. 283, — S.W.3d — (2012).

Defendant's conviction for theft by receiving, a Class D felony, was proper because the State proved that the stolen trailer's value, as defined in subdivision (12)(A)(i) of this section, was in excess of \$ 1,000; the owner of a trailer dealership testified that the owner sold the trailer at issue to the victim for \$ 1,475 and even with the damage to the trailer, it would still be worth over \$ 1,000. *Johnson v.*

State, 2012 Ark. App. 615, — S.W.3d —, 2012 Ark. App. LEXIS 719 (Oct. 31, 2012).

5-36-103. Theft of property.

CASE NOTES

ANALYSIS

Conspiracy.

Evidence.

Intent.

Reasonable Cause to Arrest.

Unauthorized Taking.

Conspiracy.

Defendant committed an overt act in furtherance of a conspiracy to commit kidnapping, aggravated robbery, theft of property, and aggravated residential burglary because he took another person to his residence and showed the person the inside of the premises, discussed how to break in the residence and how to subdue his wife, and identified the property to be taken from the residence. *Winkler v. State*, 2012 Ark. App. 704, — S.W.3d —, 2012 Ark. App. LEXIS 825 (Dec. 12, 2012).

Evidence.

Evidence that defendant violated her employer's policy by rummaging in a stockroom where the purses she stole were kept was properly admitted under Ark. R. Evid. 404(b) to demonstrate her plan, motive, opportunity, and intent, as her prior conduct was relevant to show that she knew where the purses were, how to get to them, and which ones she wanted. *Howard v. State*, 2011 Ark. App. 573, — S.W.3d — (2011).

Evidence that defendant coveted a certain brand of designer purse her employer sold; that she and a fellow employee were videotaped rummaging through a stockroom that contained such purses; that defendant bought a purse from her employer that was placed in an oversized shopping bag; that the bag proved to contain not only the purse that she had purchased, but three designer purses as well, was sufficient to establish under § 5-36-101 that she knew there were purses in the shopping bag that she had not paid for. *Howard v. State*, 2011 Ark. App. 573, — S.W.3d — (2011).

Defendant's conviction for theft of property under subdivision (a)(1) of this sec-

tion was appropriate because the state's proof that the items he stole had a value in excess of \$500 was adequate, § 5-36-101(12)(A)(i). The items were mostly purchased less than a year before the burglary, the purchase price so greatly exceeded the \$500 statutory value threshold, and thus, the victim's testimony constitutes substantial evidence of value. *Vault v. State*, 2012 Ark. App. 283, — S.W.3d — (2012).

Where defendant was convicted for residential burglary and theft under §§ 5-39-201(a)(1) and subdivision (a)(1) of this section, the trial court did not err by denying his motion for a directed verdict because the record showed that the victims returned from work to discover that their home had been burglarized; the back door of the residence had been kicked in and \$3,000 worth of property was missing. As defendant's palm print was found on the entertainment table, the jury was not required to resort to speculation or conjecture in reaching its verdicts. *Hicks v. State*, 2012 Ark. App. 667, — S.W.3d —, 2012 Ark. App. LEXIS 791 (Nov. 28, 2012).

Intent.

Evidence that defendant demanded a bank courier's cell phone, bags, and keys while armed with a gun was sufficient to support defendant's conviction for theft, despite his contention that he did not retain the items but took them only to facilitate his flight, and had no intent to permanently deprive the owner of them. *Ali v. State*, 2011 Ark. App. 758, — S.W.3d — (2011).

Reasonable Cause to Arrest.

Denial of motion to suppress was not clearly against the preponderance of the evidence, because the inventory search of defendant's vehicle was proper upon defendant's lawful arrest, and it was standard police policy to inventory the contents of any vehicle before having it towed; at the time of defendant's arrest theft of property was a Class C felony if the value of the property was less than

\$2,500 but more than \$500, and criminal attempt was a Class D felony if the offense attempted was a Class C felony. *Boykin v. State*, 2012 Ark. App. 274, — S.W.3d — (2012).

Unauthorized Taking.

Plaintiff may recover under § 16-118-107 where (1) defendants made misrepresentations to plaintiffs with the intent of

collecting the commitment fees; and (2) accepting the allegations in the Complaint as true, defendants received the commitment fees with the purpose of depriving plaintiff of its money. *Terra Renewal, LLC v. McCarthy*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 94935 (E.D. Ark. July 10, 2012).

5-36-106. Theft by receiving.

CASE NOTES

ANALYSIS

Evidence.

Knowledge and Intent.

Possession.

Value.

Evidence.

Evidence was sufficient to convict defendant of theft by receiving under subsection (a) of this section because he was found underneath a stolen truck, with a gas tank sitting nearby; and the victim testified that he witnessed defendant working on the vehicle before the police arrived and that the truck had been stripped with the battery and gas tank removed. *Scales v. State*, 2011 Ark. App. 712, — S.W.3d — (2011).

Defendant's conviction for theft by receiving under subdivision (e)(2) of this section was appropriate because his possession of recently stolen property gave rise to the presumption that he knew that the ring was stolen. The jury was not required to believe his explanation that he had found the ring on the ground. *Benton v. State*, 2012 Ark. App. 71, — S.W.3d — (2012).

Defendant's conviction for theft by receiving, in violation of subsection (a) of this section, was supported by the evidence because a gas station employee identified defendant as the driver of a vehicle only hours after it was stolen. *Turner v. State*, 2012 Ark. App. 150, — S.W.3d — (2012).

Trial court did not err in revoking defendant's suspended sentences in cases where he pled guilty to forgery and theft by receiving, because the state proved by a preponderance of the evidence that he

committed a new offense of theft by receiving under subsection (a) of this section. The complainant testified defendant took his car for a test drive and did not return it; the officer dispatched to the vehicle-theft report testified that defendant handed him the key to the car; and defendant's testimony that he took the car to a mechanic to have the transmission repaired made no sense. *Wallace v. State*, 2012 Ark. App. 571, — S.W.3d — (2012).

Knowledge and Intent.

Because there was no evidence regarding how a gun that was stolen seven or eight months earlier came to be in defendant's possession, the theft was not recent enough to give rise to a presumption that defendant knew it was stolen; therefore, the evidence was insufficient to convict defendant of violating subsection (a) of this section. *Thomas v. Ark.*, 2011 Ark. App. 637, — S.W.3d — (2011).

Possession.

Because defendant was unable to explain defendant's possession of property that had been stolen from a neighbor's home the previous day, defendant was properly convicted of violating subsection (a) of this section; consequently, defendant's prior suspensions were properly revoked. *Johnson v. State*, 2011 Ark. App. 718, — S.W.3d — (2011).

Value.

Defendant's conviction for theft by receiving, in violation of subdivision (e)(3) of this section, was proper because the State proved that the stolen trailer's value was in excess of \$ 1,000; the owner of a trailer dealership testified that the owner sold the trailer at issue to the victim for \$

1,475 and even with the damage to the trailer, it would still be worth over \$ 1,000. S.W.3d —, 2012 Ark. App. LEXIS 719 (Oct. 31, 2012).
Johnson v. State, 2012 Ark. App. 615, —

CHAPTER 37

FORGERY AND FRAUDULENT PRACTICES

SUBCHAPTER 2 — OFFENSES GENERALLY

5-37-201. Forgery.

CASE NOTES

ANALYSIS

Acts Constituting Forgery.
Evidence.

Acts Constituting Forgery.

Defendant's attempt to pass a victim's stolen check at a store completed defendant's commission of second-degree forgery, in violation of subdivision (c)(1) of this section; indeed, defendant testified that defendant "tried giving the check" to the cashier. Turner v. State, 2012 Ark. App. 150, — S.W.3d — (2012).

Evidence.

Defendant's conviction for second-degree forgery under subsection (e) of this section was proper considering accomplice testimony along with the other evidence. Although the evidence was circumstantial given that it was the accomplice, rather than defendant, who cashed the forged check, circumstantial evidence could provide the basis to support the conviction. Benton v. State, 2012 Ark. App. 71, — S.W.3d — (2012).

5-37-207. Fraudulent use of a credit card or debit card.

RESEARCH REFERENCES

ALR. Criminal Liability for Unauthorized Use of Credit Card under State Credit Card Statutes. 68 A.L.R.6th 527.

CHAPTER 38

DAMAGE OR DESTRUCTION OF PROPERTY

SUBCHAPTER.

2. OFFENSES GENERALLY.

SUBCHAPTER 2 — OFFENSES GENERALLY

SECTION.

5-38-203. Criminal mischief in the first degree.

5-38-203. Criminal mischief in the first degree.

(a) A person commits the offense of criminal mischief in the first degree if he or she purposely and without legal justification destroys or causes damage to any:

(1) Property of another; or

(2) Property, whether his or her own or property of another, for the purpose of collecting any insurance for the property.

(b) Criminal mischief in the first degree is a:

(1) Class A misdemeanor if the amount of actual damage is one thousand dollars (\$1,000) or less;

(2) Class D felony if the amount of actual damage is more than one thousand dollars (\$1,000) but five thousand dollars (\$5,000) or less;

(3) Class C felony if the amount of actual damage is more than five thousand dollars (\$5,000) but less than twenty-five thousand dollars (\$25,000); or

(4) Class B felony if the amount of actual damage is twenty-five thousand dollars (\$25,000) or more.

(c) In an action under this section involving cutting and removing timber from the property of another person:

(1) The following create a presumption of a purpose to commit the offense of criminal mischief in the first degree:

(A) The failure to obtain the survey as required by § 15-32-101; or

(B) The purposeful misrepresentation of the ownership or origin of the timber; and

(2)(A) There is imposed in addition to a penalty in subsection (b) of this section a fine of not more than two (2) times the value of the timber destroyed or damaged.

(B) However, in addition to subdivision (c)(2)(A) of this section, the court may require the defendant to make restitution to the owner of the timber.

History. Acts 1975, No. 280, § 1906; 1977, No. 360, § 7; 1981, No. 544, § 2; 1981, No. 671, § 1; A.S.A. 1947, § 41-1906; Acts 1988 (3rd Ex. Sess.), No. 13, § 1; 1995, No. 1296, § 5; 1997, No. 448, § 1; 2005, No. 1994, § 443; 2011, No. 570, § 29.

Publisher's Notes. This section is being set out to reflect a correction in (b)(1) in the 2011 supplement.

Amendments. The 2011 amendment rewrote (b)(1) and (b)(2); and added (b)(3) and (b)(4).

CASE NOTES**Willful Causation.**

Defendant's conviction for first-degree criminal mischief under subdivision (a)(1) of this section was not supported by substantial evidence where the charge was premised on the theory that he purposely caused damage to another driver's jeep,

because although there was abundant evidence to show that defendant was acting recklessly, there was nothing to show that he acted with the purpose of damaging the jeep. *Ross v. State*, 2012 Ark. App. 243, — S.W.3d — (2012).

CHAPTER 39

BURGLARY, TRESPASS, AND OTHER INTRUSIONS

SUBCHAPTER 2 — OFFENSES GENERALLY

5-39-201. Residential burglary — Commercial burglary.

CASE NOTES

Evidence.

Defendant's convictions for residential burglary and terroristic threatening, in violation of subsection (a) of this section and § 5-13-301(b)(1) were supported by sufficient evidence, as he entered his ex-wife residence with the intent or purpose of assaulting her or of threatening either her or her boyfriend. *Cash v. State*, 2011 Ark. App. 493, — S.W.3d — (2011).

Appellant's convictions for aggravated robbery, aggravated residential burglary, and misdemeanor fleeing were affirmed where a witness testified that appellant pointed a sawed-off shotgun at his head, which would necessarily constitute proof that appellant was "armed with a deadly weapon"; the testimony of one eyewitness was sufficient to sustain a conviction. *Riley v. State*, 2011 Ark. App. 511, — S.W.3d — (2011).

Where defendant was convicted for residential burglary and theft under subdivision (a)(1) of this section and § 5-36-

103(a)(1), the trial court did not err by denying his motion for a directed verdict because the record showed that the victims returned from work to discover that their home had been burglarized; the back door of the residence had been kicked in and \$3,000 worth of property was missing. As defendant's palm print was found on the entertainment table, the jury was not required to resort to speculation or conjecture in reaching its verdicts. *Hicks v. State*, 2012 Ark. App. 667, — S.W.3d —, 2012 Ark. App. LEXIS 791 (Nov. 28, 2012).

Evidence was sufficient to sustain the revocation of defendant's suspended sentence because the victim saw where defendant had broken into his shop, noticed that tools and equipment had been gathered, discovered defendant hiding inside the shop, and the victim identified defendant in a photographic lineup. *Upshaw v. State*, 2013 Ark. App. 41, — S.W.3d —, 2013 Ark. App. LEXIS 64 (Jan. 30, 2013).

5-39-202. Breaking or entering.

CASE NOTES

ANALYSIS

Evidence.

Proof.

Evidence.

Trial court did not err in denying defendant's motion for a directed verdict during a trial for breaking or entering, in violation of subdivision (a)(1) of this section, because there was sufficient evidence to support the conviction; an officer observed a car with a broken window, and found defendant in the vehicle behind the steering wheel with a screwdriver in defen-

dent's hand. *Pruitt v. State*, 2011 Ark. App. 754, — S.W.3d — (2011).

Proof.

Evidence was sufficient to convict defendant of breaking an entering automobiles when a victim described defendant and his vehicle and the police stopped defendant's vehicle while it was still within sight of the victim, there was no one else in the car, and the stolen property described by the victims was in defendant's car. *Davis v. State*, 2011 Ark. App. 561, — S.W.3d — (2011).

5-39-204. Aggravated residential burglary.**CASE NOTES****ANALYSIS**

Conspiracy.
Sufficient Evidence.

Conspiracy.

Defendant committed an overt act in furtherance of a conspiracy to commit kidnapping, aggravated robbery, theft of property, and aggravated residential burglary because he took another person to his residence and showed the person the inside of the premises, discussed how to break in the residence and how to subdue his wife, and identified the property to be taken from the residence. *Winkler v. State*, 2012 Ark. App. 704, — S.W.3d —, 2012 Ark. App. LEXIS 825 (Dec. 12, 2012).

Sufficient Evidence.

Evidence that defendant entered the victim's locked trailer in the early morn-

ing hours while the victim was asleep and struggled with and stabbed the victim supported defendant's conviction for aggravated residential burglary. *Holt v. State*, 2011 Ark. 391, — S.W.3d — (2011).

Appellant's convictions for aggravated robbery, aggravated residential burglary, and misdemeanor fleeing were affirmed where a witness testified that appellant pointed a sawed-off shotgun at his head, which would necessarily constitute proof that appellant was "armed with a deadly weapon"; the testimony of one eyewitness was sufficient to sustain a conviction. *Riley v. State*, 2011 Ark. App. 511, — S.W.3d — (2011).

***SUBTITLE 5. OFFENSES AGAINST THE
ADMINISTRATION OF GOVERNMENT*****CHAPTER 53****OFFENSES RELATING TO JUDICIAL AND OTHER
OFFICIAL PROCEEDINGS****SUBCHAPTER 1 — GENERAL PROVISIONS****5-53-108. Witness bribery.****CASE NOTES****Evidence.**

Student's testimony that, prior to sexual assault charges being filed, defendant teacher approached him and told him to tell the victim, also a student, that the teacher would give the victim money if

she would drop the case, was sufficient to support the teacher's conviction for witness bribery under subdivision (a)(1) of this section. *Paschal v. State*, 2012 Ark. 127, — S.W.3d — (2012).

5-53-134. Violation of an order of protection.

CASE NOTES

Probation Revocation.

In a case where appellant contended that an order of protection did not comport with the requirements of the law because it was issued after a hearing without appellant receiving actual notice or an opportunity to participate therein, the revocation of probation based on the commission of a felony was appropriate because appellant violated the protective order under this section; by pleading guilty, appellant admitted that he knew the order existed, an element of the crime,

and that he knowingly violated it. Appellant did not seek to appeal the order of protection, he did not raise a lack of notice before entering his guilty plea, and he did not appeal the judgment following the plea in that case; moreover, the circuit court had jurisdiction over any criminal act within its borders, and appellant admitted to committing the criminal act of violating the protective order. *Standridge v. State*, 2012 Ark. App. 563, — S.W.3d — (2012).

CHAPTER 54

OBSTRUCTING GOVERNMENTAL OPERATIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

5-54-105. Hindering apprehension or prosecution.

CASE NOTES

ANALYSIS

Evidence.
Knowledge and Intent.

Evidence.

Evidence was sufficient to convict a mother of violating § 5-27-221 and this section based on a shaken baby brain injury to her two-year-old daughter caused by the mother's boyfriend and other acts of abuse and neglect; the mother repeatedly insisted that the brain injury resulted in a fall from a bunk bed despite expert testimony that the injury could not have resulted from such a fall. *Sullivan v. State*, 2011 Ark. App. 576, — S.W.3d — (2011).

Defendant's conviction for hindering the apprehension or prosecution of her

child's abuser, in violation of subdivisions (a)(6) or (7) of this section, was supported by the evidence because defendant consistently told medical personnel and the police that her 23-month-old child's life-threatening brain injury was caused by falling from a top bunk bed. *Sullivan v. State*, 2012 Ark. 74, — S.W.3d — (2012).

Knowledge and Intent.

Evidence that defendant, the husband of a murder victim, met with his stepdaughter, the murderer, after the murder; he denied knowledge of her whereabouts; he admitted giving her money and a car to go to Mississippi; and he had a sexual relationship with her; was sufficient to convict him of hindering her apprehension under this section. *Devor v. State*, 2012 Ark. App. 82, — S.W.3d — (2012).

5-54-111. Second degree escape.

CASE NOTES

Proof.

Because defendant was not “in custody” at the time defendant violated the conditions of defendant’s release on bond under § 16-90-122(a)(2), the circuit court erred

in denying defendant’s motion for directed verdict on defendant’s conviction for second-degree escape under subdivision (a)(2) of this section. *Magness v. State*, 2012 Ark. 16, — S.W.3d — (2012).

5-54-122. Filing false report with law enforcement agency.

CASE NOTES

Evidence.

Evidence was sufficient to support defendant’s conviction for filing a false police report because an officer testified that defendant abandoned his vehicle during an attempted traffic stop, the car was then

impounded, and several days later, defendant reported the vehicle stolen. Thus, because defendant abandoned the vehicle, he knew at the time of his report that it had not been stolen. *Butler v. State*, 2011 Ark. App. 708, — S.W.3d — (2011).

5-54-125. Fleeing.

CASE NOTES

ANALYSIS

Evidence.

Unauthorized Sentence.

Evidence.

Evidence was sufficient to sustain defendant’s fleeing conviction because an officer testified that he saw a man whom he later identified as defendant flee on foot after an attempted traffic stop and found defendant’s identification card and cell phone in the abandoned vehicle. *But-*

ler v. State, 2011 Ark. App. 708, — S.W.3d — (2011).

Unauthorized Sentence.

Court entered an illegal sentence by sentencing the petitioner to seventy-two-months’ imprisonment on a misdemeanor, because if property damage occurred as a direct result of fleeing on foot, the offense was a Class A misdemeanor, and a sentence for a Class A misdemeanor should not exceed one year. *Arter v. State*, 2012 Ark. App. 327, — S.W.3d — (2012).

***SUBTITLE 6. OFFENSES AGAINST PUBLIC HEALTH,
SAFETY, OR WELFARE***

CHAPTER 62

ANIMALS

SUBCHAPTER 1 — GENERAL PROVISIONS

5-62-103. Offense of cruelty to animals.

RESEARCH REFERENCES

ALR. Challenges to Pre- and Post-Conviction Forfeitures and to Postconviction	Restitution Under Animal Cruelty Statutes. 70 A.L.R.6th 329.
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5-62-106. Disposition of animal.

RESEARCH REFERENCES

ALR. Challenges to Pre- and Post-Conviction Forfeitures and to Postconviction	Restitution Under Animal Cruelty Statutes. 70 A.L.R.6th 329.
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5-62-120. Unlawful animal fighting.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Criminal Statutes and Ordinances to Prosecution for Dogfighting. 68 A.L.R.6th 115.	Validity, Construction, and Application of Statutes and Ordinances to Prosecution for Cockfighting. 69 A.L.R.6th 207.
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CHAPTER 63

BUSINESS MISCONDUCT

SUBCHAPTER 2 — OFFENSES GENERALLY

5-63-201. Tickets to school athletic events or music entertainment events — Sale in excess of regular price.

CASE NOTES

In General.

This section applies to an exclusive agent who sells tickets that include in the price of the ticket additional fees, and the plain and ordinary meaning of “box office” is a booth, as in a theater or stadium, where tickets are sold. It is applicable to

exclusive agents of a public facility who sell music entertainment tickets that include in the price of the ticket additional fees, resulting in the price of the ticket being more than the face value and advertised price of the ticket, unless those fees are a reasonable charge for handling or

credit card use. *McMillan v. Live Nation Entm't, Inc.*, 2012 Ark. 166, — S.W.3d — (2012).

CHAPTER 64

CONTROLLED SUBSTANCES

SUBCHAPTER 1 — UNIFORM CONTROLLED SUBSTANCES ACT — DEFINITIONS

5-64-101. Definitions.

CASE NOTES

ANALYSIS

Drug Paraphernalia.
Manufacture and Production.

Drug Paraphernalia.

Sufficient evidence supported a finding that defendant possessed “drug paraphernalia” within the meaning of subdivision (14)(A) of this section, with the intent to manufacture methamphetamine because the jury could choose to believe that he knew the iodine he possessed was going to be used to make methamphetamine. *Ash-*

ley v. State, 2012 Ark. App. 131, — S.W.3d — (2012).

Manufacture and Production.

Defense counsel was not ineffective for not objecting that defendants’ convictions violated double jeopardy under § 5-1-110(b) because possession of drug paraphernalia with intent to manufacture methamphetamine was not a lesser-included offense of manufacturing methamphetamine, in violation of subsection (m) of this section. *Myers v. State*, 2012 Ark. 143, — S.W.3d — (2012).

SUBCHAPTER 4 — UNIFORM CONTROLLED SUBSTANCES ACT — PROHIBITIONS AND PENALTIES

5-64-401. [Repealed.]

CASE NOTES

ANALYSIS

Evidence Sufficient.
Lesser-Included Offense.

Evidence Sufficient.

Trial court did not err in denying defendant’s motion for a directed verdict because there was substantial evidence to support defendant’s conviction for possession of cocaine with intent to deliver, in violation of subsection (a) of this section; defendant had three cellular telephones attached to defendant’s belt and digital

scales were found in the glove compartment of defendant’s vehicle. *Dishman v. State*, 2011 Ark. App. 437, — S.W.3d — (2011).

Lesser-Included Offense.

Defense counsel was not ineffective for not objecting that defendants’ convictions violated double jeopardy because possession of methamphetamine with intent to deliver was not a lesser-included offense of manufacturing methamphetamine. *Myers v. State*, 2012 Ark. 143, — S.W.3d — (2012).

5-64-402. Controlled substances — Offenses relating to records, maintaining premises, etc.

CASE NOTES

Evidence.

Because defendant was present in a room adjacent to a kitchen where two men were sitting with a clear plastic bag of cocaine between them, the evidence was sufficient to convict defendant of unlawful possession of a controlled substance (cocaine) and maintaining a drug premises under, *inter alia*, subdivision (a)(2) of this section. *McDaniel v. State*, 2011 Ark. App. 677, — S.W.3d — (2011).

Evidence was sufficient to support a conviction for maintaining a drug premises because appellant led an informant to an apartment for the purchase of drugs, a large amount of drugs were seized from the apartment five days later, and there were three drug-free zones within 1,000 feet of the apartment. *Robelo v. State*, 2012 Ark. App. 425, — S.W.3d — (2012).

5-64-403. Controlled substances — Fraudulent practices.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Trademark Counterfeiting Statutes. 63 A.L.R.6th 303.

CASE NOTES

ANALYSIS

Evidence.
Possession.

Evidence.

Contact between defendant and an officer was the result of an investigation into drug-related criminal activity, not a routine traffic stop, because the officer blocked the vehicle in the driveway, demanded that defendant move to the back of the vehicle, informed her that he knew there were drugs in the vehicle, and asked where they were located. Defendant's pre-Miranda statement should have been suppressed. *James v. State*, 2012 Ark. App. 118, — S.W.3d — (2012).

Sufficient evidence supported a finding that defendant had the intent to manufacture methamphetamine, in violation of

subdivision (c)(5)(A) of this section, because the jury could choose to believe that defendant knew the iodine he possessed was going to be used to make methamphetamine, despite his argument that he bought it for a friend and that no other ingredients were found. *Ashley v. State*, 2012 Ark. App. 131, — S.W.3d — (2012).

Possession.

Evidence that there was a funnel, plastic tubing, coffee filters, camp fuel, syringes, gloves, a metal spoon, a smoking device, a bag of ammonia nitrate, and a pill crusher in the master bedroom of defendant's home, along with a burn barrel in the back yard, was sufficient to support a conviction for possession of paraphernalia with intent to manufacture. *Gowen v. State*, 2011 Ark. App. 761, — S.W.3d — (2011).

5-64-408. Subsequent convictions — Enhanced penalties.

CASE NOTES

Sentencing.

Appellant filed a petition for writ of habeas corpus that challenged the judg-

ment that imposed an aggregate sentence of 1080 months' imprisonment for possession of cocaine with intent to deliver and

possession of marijuana with intent to deliver. The trial court did not err by denying appellant's petition, because he presented only conclusory allegations to support his claim that his sentence was

improperly enhanced under this section using an out-of-state conviction. *Darrrough v. State*, 2013 Ark. 28, — S.W.3d —, 2013 Ark. LEXIS 32 (Jan. 31, 2013).

5-64-419. Possession of a controlled substance.

CASE NOTES

Possession.

Sufficient evidence was presented to indicate that defendant knew there was contraband in the flatbed trailer he was towing, even though it was open to access from the general public, because defen-

dant was the only person in the vehicle and more than 200 pounds of marijuana were found. Thus, there was sufficient evidence that he was in actual possession of the drugs. *Barrera v. State*, 2012 Ark. App. 533, — S.W.3d — (2012).

5-64-420. Possession of methamphetamine or cocaine with the purpose to deliver.

CASE NOTES

ANALYSIS

Evidence.
Sentencing.

Evidence.

Contact between defendant and an officer was the result of an investigation into drug-related criminal activity, not a routine traffic stop, because the officer blocked the vehicle in the driveway, demanded that defendant move to the back of the vehicle, informed her that he knew there were drugs in the vehicle, and asked where they were located. Defendant's pre-Miranda statement should have been suppressed. *James v. State*, 2012 Ark. App. 118, — S.W.3d — (2012).

Evidence was not sufficient to convict defendant of possession with intent to deliver cocaine found in a vehicle registered to his brother. Although cocaine was found on both sides of the vehicle, it was sufficiently well hidden that defendant would not have been aware of its presence simply by riding in or driving the vehicle; there was no evidence he had been in or

around the vehicle before a trip with his brother; and the only evidence of nervousness was that he did not make eye contact with the officer. *Bustillos v. State*, 2012 Ark. App. 654, — S.W.3d —, 2012 Ark. App. LEXIS 775 (Nov. 14, 2012).

Evidence was sufficient to convict defendant of possession with intent to deliver cocaine found in a vehicle registered to him and covered by an insurance policy that only lasted 30 days. The cocaine was found in a location that would take time and effort to access and was hidden in a manner that would not have been possible for a transient passenger; also, defendant appeared nervous during the stop. *Bustillos v. State*, 2012 Ark. App. 654, — S.W.3d —, 2012 Ark. App. LEXIS 775 (Nov. 14, 2012).

Sentencing.

Failure of the State to plead a specific amount of cocaine alleged to have been possessed did not limit the sentence that defendant could receive to the minimum allowed under § 5-64-401. *Bustillos v. State*, 2012 Ark. App. 654, — S.W.3d —, 2012 Ark. App. LEXIS 775 (Nov. 14, 2012).

**SUBCHAPTER 5 — UNIFORM CONTROLLED SUBSTANCES ACT — ENFORCEMENT
AND ADMINISTRATION**

5-64-505. Property subject to forfeiture — Procedure — Disposition of property.

CASE NOTES

ANALYSIS

Close Proximity.
Conveyances.

Close Proximity.

Forfeiture of firearms that were seized during a search of defendant's house with respect to the manufacture of methamphetamine was proper under this section, as the evidence supported the conclusion that all of the firearms were "in close proximity" to the drug paraphernalia. In re Gaucha-Iga 12 Gauge, 2011 Ark. App. 591, — S.W.3d — (2011).

Conveyances.

While a map in defendant's truck did not establish that the truck was used to transport marijuana in violation of subdivision (a)(4) of this section, because defendant's car smelled of raw marijuana and 28 pounds of marijuana were found in a nearby house, the car was properly forfeited as a "container" under subdivision (a)(4). Trotter v. State, 2011 Ark. App. 696, — S.W.3d — (2011).

CHAPTER 65

DRIVING WHILE INTOXICATED

SUBCHAPTER 1 — GENERAL PROVISIONS

5-65-102. Definitions.

CASE NOTES

Intoxicated.

Sufficient evidence supported defendant's conviction for driving while intoxicated (DWI) under § 5-65-103(a) where the evidence showed that: (1) defendant was driving his car erratically, causing him to leave the highway; (2) defendant was either passed out or unresponsive with his foot still on the accelerator and a tire spinning; (3) the police had to help defendant out of his car, and he was unsteady and unable to walk or stand on his own; (4) a police officer described defendant as being in a daze with slurred speech; (5) defendant's car smelled of marijuana, it contained a partially-smoked joint, and defendant told the police he had been smoking marijuana as well as ingesting large amounts of cold medicine; and (6) defendant testified at trial that he had been smoking marijuana

immediately before operating his vehicle that evening. From the evidence presented, the jury could conclude with reasonable certainty that defendant's use of marijuana influenced him to such a degree that he presented a clear and substantial danger of physical injury to himself and others. Morton v. State, 2011 Ark. App. 432, — S.W.3d — (2011).

Trial court did not err by finding appellant guilty of driving while intoxicated; a positive drug screen, an admission of taking drugs that were known by appellant to be contraindicated with operating a motor vehicle, and observed reckless driving were sufficient evidence to support the fact-finder's conclusion that appellant was intoxicated under this section. Carruth v. State, 2012 Ark. App. 305, — S.W.3d — (2012).

Evidence was sufficient to sustain de-

defendant's conviction for driving while intoxicated because defendant was seen driving erratically, and her urine test came back positive for drugs; the positive drug screen, admission of taking drugs that were known by defendant to be con-

traindicated with operating a motor vehicle, and the observed reckless driving were sufficient evidence to show defendant was intoxicated. *Carruth v. State*, — Ark. App. —, — S.W.3d —, 2012 Ark. App. LEXIS 432 (May 2, 2012).

5-65-103. Unlawful acts.

CASE NOTES

ANALYSIS

Authority to Arrest.
Elements of Offense.
Evidence.
Instructions.
Intoxicated.
Probable Cause.
Prohibited Conduct.
Right to Counsel.

Authority to Arrest.

After seeing appellant and smelling intoxicants, an officer had the authority to arrest appellant for driving while intoxicated. *Ward v. State*, 2012 Ark. App. 649, — S.W.3d —, 2012 Ark. App. LEXIS 768 (Nov. 14, 2012).

Elements of Offense.

Defendant admitted that he had drunk a six-pack of beer prior to his arrest, and the breath-alcohol test results on the Intoximeter indicated that defendant was over the legal limit of alcohol in that the test's final result was .125. In addition to the trooper's observations and defendant's failing three field sobriety tests, this constituted substantial evidence of intoxication to support defendant's conviction for driving while intoxicated. under this section. The state was not obligated to prove that defendant was driving erratically or posed a danger on the road. *Graham v. State*, 2012 Ark. App. 90, — S.W.3d — (2012).

Evidence.

A police officer credibly testified that there was a noticeable odor of alcohol in defendant's car, that defendant was so unsteady on her feet that he was afraid to conduct field-sobriety tests for fear of her falling, and that she told him that she had consumed two beers after taking medication. Therefore, the evidence was sufficient to find her guilty of driving while

intoxicated under subsection (a) of this section. *Foster v. State*, 2012 Ark. App. 640, — S.W.3d —, 2012 Ark. App. LEXIS 741 (Nov. 7, 2012).

There was reasonable cause for defendant's arrest for DWI under this section, because the trooper's observations of defendant's driving, his demeanor, and the odor of alcohol led him to believe that defendant was driving under the influence of intoxicants and was a danger to himself or others. The trooper administered two tests to defendant, both of which registered a blood-alcohol content of .12 percent; therefore, there was substantial evidence to support his DWI conviction. *Lewis v. State*, 2013 Ark. App. 39, — S.W.3d —, 2013 Ark. App. LEXIS 53 (Jan. 30, 2013).

Instructions.

Trial court did not err in rejecting a DUI defendant's proffered jury instructions because the instructions' omission of any reference to chemical testing or chemical analysis failed to take into account this section's incorporation of § 5-65-204, which describes "the chemical analysis of a person's blood, urine, or breath." The model jury instruction represented a more accurate reflection of the law, although it did not address the 2001 amendment to this section, which had eliminated the phrase "as determined by a chemical test." *Graham v. State*, 2012 Ark. App. 90, — S.W.3d — (2012).

Intoxicated.

Sufficient evidence supported defendant's conviction for driving while intoxicated (DWI) under subsection (a) of this section where the evidence showed that: (1) defendant was driving his car erratically, causing him to leave the highway; (2) defendant was either passed out or unresponsive with his foot still on the accelerator and a tire spinning; (3) the

police had to help defendant out of his car, and he was unsteady and unable to walk or stand on his own; (4) a police officer described defendant as being in a daze with slurred speech; (5) defendant's car smelled of marijuana, it contained a partially-smoked joint, and defendant told the police he had been smoking marijuana as well as ingesting large amounts of cold medicine; and (6) defendant testified at trial that he had been smoking marijuana immediately before operating his vehicle that evening. From the evidence presented, the jury could conclude with reasonable certainty that defendant's use of marijuana influenced him to such a degree that he presented a clear and substantial danger of physical injury to himself and others. *Morton v. State*, 2011 Ark. App. 432, — S.W.3d — (2011).

Probable Cause.

Even if the stop started when the officer knocked on appellant's window, the officer had reasonable suspicion that appellant was endangering other officers on the street, and the officer had authority to require appellant to stop; when the odor of alcohol became apparent, the officer had reasonable suspicion to ask appellant to get out of the vehicle, and as there was probable cause to arrest him for driving while intoxicated, the trial court did not err in denying appellant's motion to suppress. *Ward v. State*, 2012 Ark. App. 649,

— S.W.3d —, 2012 Ark. App. LEXIS 768 (Nov. 14, 2012).

Prohibited Conduct.

Trial court believed an officer's testimony that the encounter was no more than the officer trying to direct traffic and appellant's vehicle on a congested and dark street amidst a crime scene where officers' safety was at issue, and while protecting the officers was a specific explanation for knocking on appellant's window, the odor of intoxicants and his appearance gave the required suspicion for an investigation into a potential driving while intoxicated offense; under Ark. R. Crim. P. 3.1 the officer then had a duty to investigate further because it is unlawful for any person who is intoxicated to operate or be in actual physical contract of a motor vehicle. *Ward v. State*, 2012 Ark. App. 649, — S.W.3d —, 2012 Ark. App. LEXIS 768 (Nov. 14, 2012).

Right to Counsel.

Notwithstanding Ark. R. Crim. P. 4.5, the Court of Appeals of Arkansas held that defendant had no right to consult with counsel before taking a breathalyzer test following a traffic stop that led to his arrest and conviction for driving while intoxicated in violation of this section. *Lewis v. State*, 2013 Ark. App. 39, — S.W.3d —, 2013 Ark. App. LEXIS 53 (Jan. 30, 2013).

SUBCHAPTER 2 — CHEMICAL ANALYSIS OF BODY SUBSTANCES

5-65-204. Validity — Approved methods.

CASE NOTES

ANALYSIS

Compliance.
Jury Instructions.

Compliance.

Circuit court erred in allowing the results of defendant's blood-alcohol test into evidence because the state failed to provide evidence that the blood was drawn by a physician or a person acting under the direction and supervision of a physician as required by this section; there was no evidence that the medical center employee who drew defendant's blood was a regis-

tered nurse, otherwise qualified to withdraw blood, or performing his normal duties of withdrawing blood from a patient, and there was no evidence that the employee was acting under the supervision or direction of a physician at the time defendant's blood was drawn. *Bates v. State*, 2011 Ark. App. 446, — S.W.3d — (2011).

Jury Instructions.

Trial court did not err in rejecting a DUI defendant's proffered jury instructions because the instructions' omission of any reference to chemical testing or chemical

analysis failed to take into account § 5-65-103's incorporation of this section, which describes "the chemical analysis of a person's blood, urine, or breath." The model jury instruction represented a more accurate reflection of the law, although it

did not address the 2001 amendment to § 5-65-103, which had eliminated the phrase "as determined by a chemical test." *Graham v. State*, 2012 Ark. App. 90, — S.W.3d — (2012).

5-65-206. Evidence in prosecution.

CASE NOTES

ANALYSIS

Certificate.

Cross-Examination of Operator.

Certificate.

At defendant's trial for driving while intoxicated, the trial court did not err in admitting certificates under subdivision (d)(1)(A) of this section showing an officer was certified to administer BAC test and that the machine used to administer the test had been calibrated because the documents were not testimonial in nature and did not trigger the application of the Sixth Amendment Confrontation Clause. *Chambers v. State*, 2012 Ark. App. 383, — S.W.3d — (2012).

Cross-Examination of Operator.

It was not a violation of subdivision (d)(1) of this section to admit certificates of the calibration of a breathalyzer machine and of the qualifications of the machine's

operator, without the testimony of the authors of those certificates, because the statute had been amended to remove a prior requirement that the State provide such witnesses upon receiving notice from a defendant. *Chambers v. State*, 2012 Ark. 407, — S.W.3d —, 2012 Ark. LEXIS 425 (Nov. 1, 2012).

In defendant's trial for driving while intoxicated, it was not improper to place the burden on defendant, under subdivision (d)(4) of this section, to subpoena the authors of certificates that the breathalyzer machine used in defendant's case had been properly calibrated and that the operator of the machine was qualified, if defendant wished to cross-examine the authors, because the certificates were not testimonial evidence, so the State had no duty to bring the authors into court. *Chambers v. State*, 2012 Ark. 407, — S.W.3d —, 2012 Ark. LEXIS 425 (Nov. 1, 2012).

SUBCHAPTER 3 — UNDERAGE DRIVING UNDER THE INFLUENCE LAW

5-65-303. Conduct proscribed.

CASE NOTES

Search and Seizure.

When defendant was arrested for suspicion of underage driving under the influence in violation of subsection (b) of this section, the deputy's actions in transporting defendant to a nearby county outside his jurisdiction to administer a breathalyzer test were lawful under the Fourth

Amendment because the test had to be given without delay due to the exigent circumstance of defendant's falling blood alcohol content and in accordance with Health Department regulations. *Pickering v. State*, 2012 Ark. 280, — S.W.3d — (2012).

5-65-309. Implied consent.

CASE NOTES

Breath Test.

When defendant was arrested for suspicion of underage driving under the influence in violation of § 5-65-303(b), the deputy's actions in transporting defendant to a nearby county outside his jurisdiction to administer a breathalyzer test were lawful under the Fourth Amendment

because the test had to be given without delay due to the exigent circumstance of defendant's falling blood alcohol content and in accordance with Health Department regulations. Defendant consented to the test for purposes of subdivision (a)(1) of this section. *Pickering v. State*, 2012 Ark. 280, — S.W.3d — (2012).

SUBCHAPTER 4 — ADMINISTRATIVE DRIVER'S LICENSE SUSPENSION

5-65-402. Surrender of license or permit to arresting officer.

CASE NOTES

ANALYSIS

Constitutionality.
Sufficiency of Notice.

Constitutionality.

This section was not unconstitutional as applied to the driver where the hearing officer testified she considered the letter from the driver's doctor and the driver's final de novo hearing was held seventy days after the stay was granted by the circuit court, well within the 120 day limit imposed under subdivision (c)(2)(C)(i) of this section. *Miller v. Ark. Dep't of Fin. &*

Admin., 2012 Ark. 165, — S.W.3d — (2012).

Sufficiency of Notice.

Notice given to a DWI defendant that he was required to request a hearing on his license suspension within seven days was sufficient, although this section and § 5-65-403 specified that the hearing be requested within seven calendar days, because defendant filed his request timely and was given an opportunity to be heard. *Robinette v. Dep't of Fin. & Admin.*, 2011 Ark. 349, — S.W.3d — (2011).

5-65-403. Notice and receipt from arresting officer.

CASE NOTES

Sufficiency of Notice.

Notice given to a DWI defendant that he was required to request a hearing on his license suspension within seven days was sufficient, although § 5-65-402 and this section specified that the hearing be re-

quested within seven calendar days, because defendant filed his request timely and was given an opportunity to be heard. *Robinette v. Dep't of Fin. & Admin.*, 2011 Ark. 349, — S.W.3d — (2011).

CHAPTER 71

RIOTS, DISORDERLY CONDUCT, ETC.

SUBCHAPTER 2 — OFFENSES GENERALLY

5-71-208. Harassment.

CASE NOTES

Cited: Lemmond v. State, 2012 Ark. App. 390, — S.W.3d — (2012).

CHAPTER 73

WEAPONS

SUBCHAPTER 1 — POSSESSION AND USE GENERALLY

5-73-102. Possessing instrument of crime.

RESEARCH REFERENCES

ALR. Construction and Application of United States Supreme Court Holdings in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268 (2008) and *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020, 177 L. Ed. 2d 894, 2010 U.S. LEXIS 5523 (2010) Respecting Second Amendment Right to Keep and Bear Arms, to State or Local Laws Regulating Firearms or Other Weapons. 64 A.L.R.6th 131.

5-73-103. Possession of firearms by certain persons.

RESEARCH REFERENCES

ALR. Construction and Application of United States Supreme Court Holdings in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268 (2008) and *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020, 177 L. Ed. 2d 894, 2010 U.S. LEXIS 5523 (2010) Respecting Second Amendment Right to Keep and Bear Arms, to State or Local Laws Regulating Firearms or Other Weapons. 64 A.L.R.6th 131.

CASE NOTES

ANALYSIS

Evidence.
Expungement of Prior Felony.
Sentencing.

Evidence.

Evidence was sufficient to support defendant's conviction for possession of a firearm by certain persons, in violation of

subsection (a) of this section, as a firearm was observed in plain view next to defendant in a truck that he was riding in; the evidence showed that defendant was in constructive possession, if not actual possession, of the weapon. *Hancock v. State*, 2012 Ark. App. 338, — S.W.3d — (2012).

Defendant's conviction for possession of a firearm by a convicted felon under subsection (a) of this section was sufficiently

supported by evidence from a friend that he had seen defendant shoot the rifle although the rifle belonged to defendant's father and it was at his friend's house for shooting a raccoon. *Fraser v. State*, 2012 Ark. App. 598, — S.W.3d —, 2012 Ark. App. LEXIS 699 (Oct. 24, 2012).

Defendant's conviction for possession of a firearm by a felon, in violation of subdivision (a)(1) of this section, was supported by the evidence because defendant lived alone in a cabin for a week in which there was a gun in plain sight right in front of the door; although defendant denied being aware of the gun, the jury was not required to believe defendant's testimony. *Magness v. State*, 2012 Ark. App. 609, — S.W.3d —, 2012 Ark. App. LEXIS 721 (Oct. 31, 2012).

Expungement of Prior Felony.

Trial court did not err by admitting defendant's prior conviction for felony possession of drug paraphernalia into evidence as proof on a charge of possession of a firearm by a felon (FIP) because subdivision (a)(1) of this section specifically provided that defendant's expunged felony conviction could be used as proof on his FIP charge; although still uncodedified, 1995 Ark. Acts. 595, § 1 indicates legislative intent for an expunged felony conviction to remain a conviction for the pur-

poses of possession of a firearm by a felon. *Smith v. State*, 2011 Ark. App. 539, — S.W.3d — (2011).

Sentencing.

State v. Lawson, 295 Ark. 37, 746 S.W.2d 544, 1988 Ark. LEXIS 84 (1988), prohibits "stacking" of specific subsequent-offense penalty enhancements like the one in the driving while impaired statute, which operates to convert a misdemeanor to a felony because of multiple recurrences of the same underlying offense within a specified period of time; the Court of Appeals of Arkansas, Division One, declines to expand *Lawson* past that boundary. Therefore, there was no impermissible stacking of a specific firearm enhancement statute for a felon in possession of a firearm under subdivision (c)(1) of this section with the general habitual-offender enhancement statute under § 5-4-401(b)(2)(C); subdivision (c)(1) did not contain an enhancement for recidivism, there was no greater sentence than if either statute was applied singly, and the designation of the possession offense as a Class B felony was not an enhancement. *Moore v. State*, 2012 Ark. App. 662, — S.W.3d —, 2012 Ark. App. LEXIS 764 (Nov. 14, 2012).

Cited: *Butler v. State*, 2011 Ark. App. 708, — S.W.3d — (2011).

5-73-125. Interstate sale and purchase of shotguns, rifles, and ammunition.

RESEARCH REFERENCES

ALR. Preemption of State Regulation of Weapons and Other Laws by Federal Gun Control Act. 65 A.L.R.6th 329.

CHAPTER 74**GANGS****SUBCHAPTER 1 — ARKANSAS CRIMINAL GANG, ORGANIZATION, OR ENTERPRISE ACT****5-74-101. Title.****RESEARCH REFERENCES**

ALR. Validity of Criminal State Racketeer Influenced and Corrupt Organizations Acts and Similar Acts Related to Gang Activity and the Like. 58 A.L.R.6th 385.

5-74-104. Engaging in a continuing criminal gang, organization, or enterprise.**RESEARCH REFERENCES**

ALR. Validity of Criminal State Racketeer Influenced and Corrupt Organizations Acts and Similar Acts Related to Gang Activity and the Like. 58 A.L.R.6th 385.

5-74-106. Simultaneous possession of drugs and firearms.**CASE NOTES****Evidence.**

Evidence was sufficient to convict defendant of simultaneous possession of drugs and firearms under subdivision (a)(1) of this section and defendant could not avail himself of the defense in subsection (d) as he possessed methamphetamine and a gun was accessible for use because it was in plain sight on a night stand with an ammunition clip nearby and the gun could have easily been loaded. *Arroyo v. State*, 2011 Ark. App. 523, — S.W.3d — (2011).

Evidence was sufficient to convict defendant of possession of cocaine and simulta-

neous possession of drugs and firearms, because the jury could reasonably conclude that defendant had knowledge of the cocaine and exercised care, control, and management of the cocaine, and defendant constructively possessed the cocaine and he did so while in possession of a firearm; the cocaine was found at a location that was level with the driver's knee and defendant was in close proximity to the drugs, and the handgun was located inside the vehicle. *Boykin v. State*, 2012 Ark. App. 274, — S.W.3d — (2012).

5-74-108. Engaging in violent criminal group activity.**RESEARCH REFERENCES**

ALR. Validity of Criminal State Racketeer Influenced and Corrupt Organizations Acts and Similar Acts Related to Gang Activity and the Like. 58 A.L.R.6th 385.

TITLE 6
EDUCATION

SUBTITLE 2. ELEMENTARY AND SECONDARY EDUCATION GENERALLY

- CHAPTER.
17. PERSONNEL.
18. STUDENTS.

SUBTITLE 2. ELEMENTARY AND SECONDARY
EDUCATION GENERALLY

CHAPTER 11
EDUCATION

SUBCHAPTER 1 — STATE BOARD OF EDUCATION

6-11-102. Commissioner of Education.

A.C.R.C. Notes. Acts 2012, No. 246, § 23, provided: “SALARY OF THE COMMISSIONER OF THE DEPARTMENT OF EDUCATION. It is the intent of the General Assembly that the appropriation for the salary of the Commissioner of the Department of Education shall be the sole and exclusive authority for his or her salary. It is further the intent of the General Assembly that the Commissioner be required to devote all of his or her working time exclusively to the performance of his or her duties as Commissioner of the Department of Education. Therefore, the Commissioner of the Department of Education is hereby prohibited from accepting

any additional salary from any other source (including state, federal, or private entities or persons) for the performance of his or her duties as Commissioner, and is prohibited from accepting any salary, fees or compensation from any other source (including state, federal or private entities or persons) for any other employment of any kind outside the scope of his or her duties as Commissioner, including but not limited to consulting work for any other public or private entity. This section shall not be construed to prohibit the Commissioner from accepting or receiving expense reimbursements and employee benefits as provided by State law.”

CHAPTER 13
SCHOOL DISTRICTS

SUBCHAPTER 6 — SCHOOL DISTRICT BOARDS OF DIRECTORS GENERALLY

6-13-631. Effect of minority population on election.

CASE NOTES

Rezoning of Boundaries.

Voters who prevailed on a claim against a school district for failing to adopt new district lines following the census, in vio-

lation of this section, were not entitled to prevailing party attorney’s fees because the trial court clearly awarded relief solely under this section, which did not

provide for attorney's fees. *Fluker v. Helena*, 2012 Ark. 327, — S.W.3d — (2012).

CHAPTER 15

EDUCATIONAL STANDARDS AND QUALITY GENERALLY

SUBCHAPTER 10 — ARKANSAS PUBLIC EDUCATION ACT

6-15-1001. Title.

CASE NOTES

In General.

Arkansas Legislature did not intend to partially repeal § 21-9-301 when it enacted the Arkansas Public Education Act,

§§ 6-15-1001 to 1007. *Young v. Blytheville Sch. Dist.*, 2013 Ark. App. 50, — S.W.3d —, 2013 Ark. App. LEXIS 68 (Jan. 30, 2013).

6-15-1002. Legislative findings.

CASE NOTES

Private Right of Action.

Arkansas Public Education Act, §§ 6-15-1001 to 1007, does not expressly provide for a private right of action or for any kind of remedy; therefore, a school district and a bus driver could not have been sued

over a student's rape based on alleged failures under this section or § 6-15-1005. *Young v. Blytheville Sch. Dist.*, 2013 Ark. App. 50, — S.W.3d —, 2013 Ark. App. LEXIS 68 (Jan. 30, 2013).

6-15-1005. Safe, equitable, and accountable public schools.

CASE NOTES

Private Right of Action.

Arkansas Public Education Act, §§ 6-15-1001 to 1007, does not expressly provide for a private right of action or for any kind of remedy; therefore, a school district and a bus driver could not have been sued

over a student's rape based on alleged failures under § 6-15-1002 or this section. *Young v. Blytheville Sch. Dist.*, 2013 Ark. App. 50, — S.W.3d —, 2013 Ark. App. LEXIS 68 (Jan. 30, 2013).

CHAPTER 17

PERSONNEL

SUBCHAPTER.

3. EMPLOYMENT AND ASSIGNMENT.

9. THE ARKANSAS TEACHERS' SALARY LAW.

SUBCHAPTER 3 — EMPLOYMENT AND ASSIGNMENT

SECTION.

6-17-309. Licensure — Waiver.

6-17-309. Licensure — Waiver.

(a)(1) No class of students shall be under the instruction of a teacher who is not licensed to teach the grade level or subject matter of the class for more than thirty (30) consecutive school days in the same class during a school year.

(2) This provision shall not apply to:

(A) Nondegreed vocational-technical teachers;

(B) Those persons approved by the Department of Education to teach the grade level or subject matter of the class in the Department of Education's distance learning program;

(C) Those persons teaching concurrent credit courses or advanced placement courses who:

(i) Are employed by a postsecondary institution;

(ii) Meet the qualification requirements of that institution or the Department of Workforce Education; and

(iii) Are teaching in a course in which credit is offered by an institution of higher education or a technical institute;

(D) Licensed teachers teaching in the following settings:

(i) An alternative learning environment;

(ii) A juvenile detention facility;

(iii) A residential and day alcohol, drug, and psychiatric facility program;

(iv) An emergency youth shelter;

(v) A facility of the Division of Youth Services of the Department of Human Services; or

(vi) A facility of the Division of Developmental Disabilities Services of the Department of Human Services; and

(E) A licensed special education teacher teaching two (2) or more core academic subjects exclusively to children with disabilities.

(b)(1) If this requirement imposes an undue hardship on a school district, the school district may apply to the State Board of Education for a waiver.

(2) The state board shall develop rules and regulations for granting a waiver.

(3) Any school district that obtains a waiver shall send written notice of the assignment to the parent or guardian of each student in the classroom no later than the thirtieth school day after the date of the assignment.

(4) The state board may waive or modify the requirement that an applicant seeking licensure as a special education teacher complete an additional performance-based program of study if the applicant:

(A) Is licensed in another state with a special education license or endorsement; and

(B) Has taught special education students for not less than five (5) years.

History. Acts 2001, No. 1623, § 1; 2005, No. 2151, § 16; 2007, No. 1007, § 1; 2007, No. 1573, § 22.

Publisher's Notes. This section is being set out to reflect a correction in the bound volume.

SUBCHAPTER 8 — TEACHERS' SALARIES GENERALLY

6-17-809. Teachers for the visually impaired entering state service.

A.C.R.C. Notes. Acts 2012, No. 180, § 13, provided: "CERTIFIED MASTERS OR BACHELOR TEACHERS ENTERING STATE SERVICE. Upon the superintendent's certification to the State Personnel Administrator of prior service at an educational institution, the salary of teachers entering state service as teachers

for the sensory impaired may be adjusted to a rate of pay closest to but not less than the annual salary they would have received from their previous employer, effective upon employment at ASB.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-17-810. Teachers for the hearing impaired entering state service.

A.C.R.C. Notes. Acts 2012, No. 170, § 10, provided: "CERTIFIED MASTERS OR BACHELOR TEACHERS ENTERING STATE SERVICE. Upon the superintendent's certification to the State Personnel Administrator of prior service at an educational institution, the salary of teachers entering state service as teachers

may be adjusted to a rate of pay closest to but not less than the annual salary they would have received from their previous employer, effective upon employment at ASD.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 9 — THE ARKANSAS TEACHERS' SALARY LAW

SECTION.

6-17-919. Warrants void without valid license and contract.

6-17-919. Warrants void without valid license and contract.

(a) All warrants issued in payment of teachers' salaries are void unless:

(1)(A) The teacher is licensed to teach in the State of Arkansas by a license issued by the State Board of Education; or

(B) The public school district employing the teacher has other documentation from the Office of Professional Licensure of the Department of Education authorizing employment of the teacher under the conditions set forth by the department in the documentation;

(2) The teacher has been employed by a valid written contract; and

(3) Copies of such contract are on file in the office of the county treasurer or the school district treasurer if the school district has its own treasurer.

(b) The school district superintendent and the superintendent's surety shall be liable for any warrants that he or she countersigns in

payment of teachers' salaries unless and until the state board has issued a valid license or the department has provided the documentation required by subdivision (a)(1)(B) of this section.

(c) The county treasurer, or the school district treasurer if the school district has its own treasurer, and his or her surety shall be liable for all warrants in payment of teachers' salaries that he or she pays unless and until there is a valid contract on file in his or her office.

History. Acts 1941, No. 319, § 4; 1959, No. 455, § 1; 1961, No. 63, § 1; 1973, No. 496, § 2; 1983, No. 402, § 1; A.S.A. 1947, § 80-1304; Acts 1993, No. 294, § 11; 1995, No. 233, § 8; 1995, No. 1296, § 20; 1999, No. 1078, § 69; 2007, No. 710, § 4.

Publisher's Notes. This section is being set out to reflect a correction in the bound volume.

SUBCHAPTER 11 — INSURANCE

6-17-1117. Health insurance.

A.C.R.C. Notes. Acts 2012, No. 269, § 25, provided: "PUBLIC SCHOOL RETIREE HEALTH INSURANCE. The Employee Benefits Division of the Department of Finance and Administration may use up to eleven dollars and twenty cents (\$11.20) from each contribution made under Arkansas Code §6-17-1117 (a) to offset the cost of health insurance premiums to eligible members electing to participate in the public school employees' health insurance program as a retiree."

Acts 2012, No. 269, § 27, provided: "HEALTH INSURANCE. The appropriate

tion contained herein for Public School Employee Insurance each fiscal year shall be used to provide the state contribution for insurance premiums for employees of the Cooperative Education Services Areas, Vocational Centers, and the school operated by the Department of Correction who participate in the Arkansas Public School Life and Health Insurance Program.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 15 — TEACHER FAIR DISMISSAL ACT

6-17-1501. Title.

CASE NOTES

Just Termination.

Teacher failed to demonstrate that her termination was unlawful and without just and reasonable cause under the Teacher Fair Dismissal Act of 1983, §§ 6-17-1501 to 6-17-1510, where the teacher

used book club bonus points for her own personal gain, made disrespectful remarks in the school building during school hours, and was untruthful about the incident. *Timpani v. Lakeside Sch. Dist.*, 2011 Ark. App. 668, — S.W.3d — (2011).

6-17-1503. Construction.

CASE NOTES

Termination and Nonrenewal.

Circuit court correctly upheld a school district's decision to not to renew a teach-

er's contract because the district did not fail to substantially comply with its personnel policies under the subsection (c) of

this section, the Arkansas Teacher Fair Dismissal Act; the district's policies required an evaluation of the needs and goals of the district, and the teacher was not needed to teach in the licensure area of social studies. *Kasinger v. East End Sch. Dist.*, 2011 Ark. App. 595, — S.W.3d — (2011).

Teacher failed to demonstrate that her termination was unlawful and without just and reasonable cause under the Teacher Fair Dismissal Act of 1983, §§ 6-17-1501 to 6-17-1510, where the teacher used book club bonus points for her own personal gain, made disrespectful remarks in the school building during school

hours, and was untruthful about the incident. *Timpani v. Lakeside Sch. Dist.*, 2011 Ark. App. 668, — S.W.3d — (2011).

Nonrenewal of a counselor's employment contract violated the Arkansas Teacher Fair Dismissal Act of 1983, § 6-17-1501 et seq., because it was unreasonable to hold the counselor accountable for errors in a student handbook relating to graduation requirements, and there was no substantial compliance with the Act where the counselor was only evaluated once during his 14-year tenure at a school. *Bismarck Sch. Dist. v. Sims*, 2012 Ark. App. 239, — S.W.3d — (2012).

6-17-1504. Evaluation — Effect.

CASE NOTES

Compliance.

Nonrenewal of a counselor's employment contract violated the Arkansas Teacher Fair Dismissal Act of 1983, § 6-17-1501 et seq., because it was unreasonable to hold the counselor accountable for errors in a student handbook relating to

graduation requirements, and there was no substantial compliance with the Act where the counselor was only evaluated once during his 14-year tenure at a school. *Bismarck Sch. Dist. v. Sims*, 2012 Ark. App. 239, — S.W.3d — (2012).

6-17-1506. Contract renewal — Notice of nonrenewal — Rescission.

CASE NOTES

Cited: *Bismarck Sch. Dist. v. Sims*, 2012 Ark. App. 239, — S.W.3d — (2012).

6-17-1507. Notice of termination recommendation.

CASE NOTES

Adequacy of Notice.

In an action under the Teacher Fair Dismissal Act of 1983, §§ 6-17-1501 to 6-17-1510, the superintendent complied with the notice requirements of this section by setting forth the basis for each of

the four grounds for the teacher's termination in such clear detail that any reasonable teacher would have had no trouble preparing a defense. *Timpani v. Lakeside Sch. Dist.*, 2011 Ark. App. 668, — S.W.3d — (2011).

6-17-1510. Board action on termination or nonrenewal — Appeal.

CASE NOTES

ANALYSIS

Dismissal Improper.
Parol Evidence.

Dismissal Improper.

Nonrenewal of a counselor's employment contract violated the Arkansas Teacher Fair Dismissal Act of 1983, § 6-17-1501 et seq., because it was unreasonable to hold the counselor accountable for errors in a student handbook relating to graduation requirements, and there was no substantial compliance with the Act where the counselor was only evaluated once during his 14-year tenure at a school.

Bismarck Sch. Dist. v. Sims, 2012 Ark. App. 239, — S.W.3d — (2012).

Parol Evidence.

Circuit court did not improperly consider parol evidence in upholding a school district's decision to not renew a teacher's contract because additional testimony and evidence was specifically permitted by subsection (d) of this section, the Arkansas Teacher Fair Dismissal Act, and was properly considered by the circuit court; accordingly, the parol-evidence rule was inapplicable, Kasinger v. East End Sch. Dist., 2011 Ark. App. 595, — S.W.3d — (2011).

SUBCHAPTER 24 — TEACHER COMPENSATION PROGRAM OF 2003

6-17-2403. Minimum teacher compensation schedule.

A.C.R.C. Notes. Acts 2012, No. 269, § 23, provided: "AVERAGE TEACHER SALARY. The Arkansas Department of Education is requested to calculate Average Teacher Salary in the Department's Annual Statistical Report to not include extra duty funds. Specifically, the Department is requested to calculate the Average Teacher Salary amount using the Na-

tional Education Association definitions for Average Salary for Classroom Teachers. The Arkansas Department of Education shall submit this data annually to the National Education Association in accordance with that organization's deadlines for submission for their report 'Rankings and Estimates' which includes state-by-state teacher salary comparisons."

CHAPTER 18

STUDENTS

SUBCHAPTER.

2. ATTENDANCE.

SUBCHAPTER 2 — ATTENDANCE

SECTION.

6-18-227. Arkansas Opportunity Public School Choice Act of 2004.

6-18-227. Arkansas Opportunity Public School Choice Act of 2004.

(a)(1) This section may be referred to and cited as the "Arkansas Opportunity Public School Choice Act of 2004".

(2)(A) The purpose of this section is to provide enhanced opportunity for students in this state to gain the knowledge and skills necessary for postsecondary education, a technical education, or the world of work.

(B) The General Assembly:

(i) Recognizes that the Arkansas Constitution, as interpreted by the Arkansas Supreme Court in *Lake View School District No. 25 v. Huckabee*, 351 Ark. 31 (2002), makes education a paramount duty of the state;

(ii) Finds that the Arkansas Constitution requires the state to provide an adequate education;

(iii) Further finds that a student should not be compelled against the wishes of the parent, guardian, or the student, if the student is over eighteen (18) years of age, to remain in a school designated as a level 1 school under § 6-15-2103 for two (2) or more consecutive years; and

(iv) Shall make available a public school choice option in order to give a child the opportunity to attend a public school that is performing satisfactorily.

(C) This section shall take effect with the implementation of school performance category levels.

(3) The General Assembly further finds that giving more options to parents and students with respect to where the students attend public school will increase the responsiveness and effectiveness of the state's schools, since teachers, administrators, and school board members will have added incentives to satisfy the educational needs of the students who reside in the district.

(4) A public school choice program is hereby established to enable any student to transfer from a failing school to another public school in the state, subject to the restrictions contained in this section.

(b)(1) Upon the request of a parent, guardian, or the student, if the student is over eighteen (18) years of age, a student may transfer from his or her resident district to another public school in accordance with the provisions of this section if:

(A) The resident public school has been designated pursuant to § 6-15-2103 as a level 1 school for two (2) or more consecutive school years; and

(B) The parent, guardian, or the student, if the student is over eighteen (18) years of age, has notified the Department of Education and both the sending and receiving school districts of the request for a transfer no later than July 30 of the first year in which the student intends to transfer.

(2)(A)(i) For the purposes of continuity of educational choice, the transfer shall operate as an irrevocable election for each subsequent entire school year and shall remain in force until the student completes high school or the parent, guardian, or the student, if the student is over eighteen (18) years of age, makes application no later than July 30 for attendance or transfer as provided for by §§ 6-18-202, 6-18-206, and 6-18-316.

(ii) Such a transfer shall be effective at the beginning of the next academic year.

(B) Application for the opportunity public school choice option shall be provided by the department, shall contain a notice that a transfer under this subsection shall operate as an irrevocable choice for at least one (1) entire school year, and shall remain in force until the student completes high school as provided in this subsection except as otherwise provided by law.

(3)(A) For each student enrolled in or assigned to a school that has been designated as a level 1 school for two (2) or more consecutive school years, a school district shall:

(i) Timely notify the parent, guardian, or the student, if the student is over eighteen (18) years of age, as soon as practicable after the designation is made, of all options available pursuant to this section; and

(ii) Offer the parent, guardian, or the student, if the student is over eighteen (18) years of age, an opportunity to enroll the student in any public school that has been designated by the state pursuant to § 6-15-2103 as a school performing higher than that in which the student is currently enrolled or to which the student has been assigned, but not less than annual performance category level 3. The opportunity to continue attending the higher performing public school shall remain in force until the student graduates from high school.

(B)(i) The parent or guardian of a student enrolled in or assigned to a school that has been designated as a school in level 1 under § 6-15-2103 for two (2) or more consecutive years may choose as an alternative to enroll the student in a legally allowable category level 3 or higher performing public school nearest to the student's legal residence.

(ii) That school or school district shall accept the student and report the student for purposes of the funding pursuant to applicable state law.

(C)(i) Students with disabilities who are eligible to receive services from the school district under federal or state law, including students receiving additional funding through federal title programs specific to the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., and who participate in this program remain eligible to receive services from the school district as provided by federal or state law.

(ii) Any funding for such a student shall be transferred to the district to which the student transfers.

(c)(1)(A) The receiving district or charter school may transport students to and from the transferring district or charter school, and the cost of transporting students shall be the responsibility of the transferring district or charter school except as provided under subdivisions (c)(1)(B) and (c)(2) of this section.

(B) A transferring district or charter school shall not be required to spend more than four hundred dollars (\$400) per student per school

year for transportation required under subdivision (c)(1)(A) of this section.

(2) Upon the transferring district's receiving a category level 3 or higher for its annual performance, the transportation costs shall no longer be the responsibility of the transferring district, and the student's transportation and the costs of the transportation shall be the responsibility of the parents.

(d)(1)(A) Each district school board of directors shall offer the opportunity public school choice option within the public schools.

(B) The opportunity public school choice option shall be offered in addition to other existing choice programs.

(2)(A)(i) A school district shall not deny a student the ability to attend a school in the student's school district of choice under this section unless there is a lack of capacity at the school in the student's school district of choice.

(ii) A lack of capacity may be claimed by a school district only if the school district has reached the maximum student-to-teacher ratio allowed under federal law, state law, the rules for standards of accreditation, or other applicable regulations.

(B) The race or ethnicity of a student shall not be used to deny a student the ability to attend a school in the student's school district of choice under this section.

(3) A student or the student's parent or guardian may appeal a school district's decision to deny admission to a school in a student's school district of choice due to lack of capacity to the State Board of Education after the student or the student's parent or guardian receives a written notice from the school district of choice that admission has been denied.

(4) The department shall promulgate rules governing the use of school capacity as a basis for denying admission under this section.

(e)(1) The provisions of this section and all student choice options created in this section shall comply with § 6-18-206(d), (e), and (i) and shall not be subject to any other limitation or restriction provided by law.

(2) If any part of this section conflicts with the provisions of a federal desegregation court order applicable to a school district, the provisions of the federal desegregation court order shall govern.

(f) The department shall develop an annual report on the status of school choice and deliver the report to the state board, the Governor, and the Legislative Council at least ninety (90) days prior to the convening of the regular session of the General Assembly.

(g) Each district school board of directors shall annually report the number of students applying for and attending the various types of public schools of choice in the district, including schools such as magnet schools, according to rules adopted by the state board.

(h)(1) A receiving district shall accept credits toward graduation that were awarded by another district.

(2) The receiving district shall award a diploma to a nonresident student if the student meets the receiving district's graduation requirements.

(i) For purposes of determining a school district's state equalization aid, the nonresident student shall be counted as a part of the average daily membership of the district to which the student has transferred.

(j)(1) All school districts shall report to the department on an annual basis the race, gender, and other pertinent information needed to properly monitor compliance with the provisions of this section.

(2) The reports may be on those forms that are prescribed by the department, or the data may be submitted electronically by the district using a format authorized by the department.

(3) The department may put on probation the superintendent of any school district that fails to file its report each year or fails to file any other information with a published deadline requested from school districts by the department so long as thirty (30) calendar days are given between the request for the information and the published deadline.

(4) A copy of the report shall be provided to the interim House Committee on Education and the interim Senate Committee on Education.

(k)(1) Unless excused by the school for illness or other good cause:

(A) Any student participating in the opportunity public school choice option shall remain in attendance throughout the school year and shall comply fully with the school's code of conduct; and

(B) The parent or guardian of each student participating in the opportunity public school choice option shall comply fully with the receiving public school's parental involvement requirements.

(2) A participant who fails to comply with this section shall forfeit the opportunity public school choice option.

(l)(1) The maximum opportunity public school choice funds granted for an eligible student shall be calculated based on applicable state law.

(2) The receiving school district shall report all students who transfer from another public school under this program. The students attending public schools pursuant to the opportunity public school choice option shall be reported separately from those students reported for purposes of compliance with applicable state law.

(3) The public school that provides services to students with disabilities shall receive funding as determined by applicable federal and state law.

(m) The state board shall adopt any rules necessary for the implementation of this section pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(n) A district under this program shall request public service announcements to be made over the broadcast media and in the print media at such times and in such a manner as to inform parents or guardians of students in adjoining districts of the availability of the program, the application deadline, and the requirements and procedure for nonresident students to participate in the program.

History. Acts 2003 (2nd Ex. Sess.), No. 35, § 7; 2005, No. 2121, § 22; 2011, No. 1124, §§ 1, 2; 2011, No. 1147, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, subdivision (e)(1) is set out above as amended by Acts 2011, No. 1147, § 1. Subdivision (e)(1) was also amended by Acts 2011, No. 1124, § 1, to read as follows: “(e)(1) The provisions of this section and all student choice options created in this section are subject only to the limitations of § 6-18-206(d)-(e), (g), and (i).”

Publisher’s Notes. This section is being set out to reflect a correction in the 2011 supplement.

Amendments. The 2011 amendment by No. 1124, in present (e)(1), inserted

“only” and substituted “§ 6-18-206(e)-(e), (g), and (i)” for “6-18-206(d)-(f)”; added (e)(2); and deleted former (k)(2) and redesignated the remaining subdivision accordingly.

The 2011 amendment by No. 1147 rewrote (c)(1); substituted “responsibility of the transferring district” for “responsibility of the state” in (c)(2); rewrote (d)(2); inserted (d)(3) and (d)(4); added (e)(2) and redesignated the existing language of (e) as (e)(1); and substituted “shall comply with § 6-18-206(d), (e), and (i) and shall not be subject to any other limitation or restriction provided by law” for “are subject to the limitations of § 6-18-206(d)-(f)” in (e)(1).

SUBCHAPTER 5 — DISCIPLINE

6-18-502. Guidelines for development of school district student discipline policies.

RESEARCH REFERENCES

ALR. Propriety of School Policies, and Measures Taken Pursuant to School Policies, Prohibiting the Possession, Display,

or Use of Cell Phones in School. 70 A.L.R.6th 145.

SUBCHAPTER 7 — HEALTH

6-18-703. School-based health clinics.

A.C.R.C. Notes. Acts 2012, No. 246, § 28, provided: “STATE FUND RESTRICTIONS. No state funds shall be used for abortion referral in public schools, or for abortion services. Funds shall be expended in accordance with Arkansas Code Annotated § 6-18-703.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 269, § 29, provided: “STATE FUND RESTRICTIONS. No state funds shall be used for abortion referral in public schools, or for abortion services. Funds shall be expended in ac-

cordance with Arkansas Code Annotated §6-18-703.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 280, § 29, provided: “STATE FUND RESTRICTIONS. No state funds shall be used for abortion referral in public schools, or for abortion services. Funds shall be expended in accordance with Arkansas Code Annotated § 6-18-703.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 20

FINANCES

SUBCHAPTER 2 — MANAGEMENT AND APPORTIONMENT OF FUNDS GENERALLY

6-20-212. Desegregation expenses.

A.C.R.C. Notes. Acts 2012, No. 269, § 10, provided: “DESEGREGATION EXPENSES. (A) For the fiscal year ending June 30, and for each fiscal year thereafter, the Department of Education shall from time to time as needed, certify to the State Treasurer and the Chief Fiscal Officer of the State, the amount of funds disbursed or approved to be disbursed by the Department of Education for desegregation expenses under any ‘Desegregation Settlement Agreement’. Upon the receipt

of such certification, the State Treasurer, after making those deductions as set out in Arkansas Code 19-5-202(b)(2)(B), shall also deduct from the net general revenues the amount certified and transfer this amount to the Department of Education Public School Fund Account there to be used exclusively for payment of or reimbursement for expenses incurred from the Department of Education Public School Fund Account under any ‘Desegregation Settlement Agreement’.”

6-20-224. Federal turnback funds.

A.C.R.C. Notes. Acts 2012, No. 246, § 21, provided: “TURNBACK FUNDS. Any Federal Mineral Leasing Funds, Federal Forest Reserve Funds, Federal Flood Control Funds, or any similar turnback funds in the State Treasury for which the eligible county and/or school district can-

not be identified may be transferred to the Department of Education Public School Fund Account and used for any lawful school purpose.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 4 — DISTRICT FINANCES

6-20-415. Consultants.

A.C.R.C. Notes. Acts 2012, No. 246, § 27, provided: “PULASKI COUNTY DESEGREGATION CASE COSTS FUND TRANSFER — PUBLIC SCHOOL FUND. The Department of Education shall retain and use any unexpended balance of funds transferred to the Department of Education Fund Account during the 2007-09 biennium for the purpose of providing funds for Pulaski County Desegregation Case Costs incurred by the Department of Education and the three (3) Pulaski County School Districts to comply with the provisions of Arkansas Code §6-20-415 and §6-20-416. These retained funds shall be used exclusively to provide funds for

Pulaski County Desegregation Case Costs incurred by the Department of Education and the three (3) Pulaski County School Districts under Arkansas Code §6-20-415 and §6-20-416.

“No portion of these retained funds shall be expended by the Department of Education without certification by the Commissioner of the Department of Education to the Chief Fiscal Officer of the State and prior approval by the Chief Fiscal Officer of the State.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

6-20-416. Desegregation funding.

A.C.R.C. Notes. Acts 2012, No. 246, § 27, provided: "PULASKI COUNTY DESEGREGATION CASE COSTS FUND TRANSFER — PUBLIC SCHOOL FUND. The Department of Education shall retain and use any unexpended balance of funds transferred to the Department of Education Fund Account during the 2007-09 biennium for the purpose of providing funds for Pulaski County Desegregation Case Costs incurred by the Department of Education and the three (3) Pulaski County School Districts to comply with the provisions of Arkansas Code §6-20-415 and §6-20-416. These retained funds shall be used exclusively to provide funds for

Pulaski County Desegregation Case Costs incurred by the Department of Education and the three (3) Pulaski County School Districts under Arkansas Code §6-20-415 and §6-20-416.

"No portion of these retained funds shall be expended by the Department of Education without certification by the Commissioner of the Department of Education to the Chief Fiscal Officer of the State and prior approval by the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 6 — LOCAL SCHOOL DISTRICT ISOLATED FUNDING

A.C.R.C. Notes. Acts 2012, No. 269, § 7, provided: "FUND ALLOCATION. The appropriation for the Isolated Funding line item in Section 1 of this Act may be fully funded. Any funding and appropriation for Isolated Funding that is not utilized shall be transferred to the appropriation for Special Needs Isolated Funding in Section 1 of this Act and shall be used there for fully funding each subsection (c) through (f) of Arkansas Code §6-20-604 on a pro rata basis until the available funds are exhausted. Pro rata basis is defined as providing each district qualifying for additional funding under subsections (c) through (f) a proportionate share based on how each district's additional funding amount bears to the total additional funding amounts for all qualifying districts. If any funding and appropriation remains after funding each subsection (c) through (f) of Arkansas Code §6-20-604 the remaining balance shall be used to fund the provisions of Arkansas Code §6-20-604 (h) on an equal basis until the available funds are exhausted.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-20-604. Additional funding.

A.C.R.C. Notes. Acts 2012, No. 269, § 31, contained a previous version of § 6-20-604(e) and was set out in that act indicating no amendment. A.C.R.C. staff has determined that the inclusion of § 6-

20-604(e) in Acts 2012, No. 269, § 31, was a clerical error. Section 6-20-604(e) is set out above as last amended by Acts 2011, No. 1131, § 4.

SUBCHAPTER 22 — ARKANSAS EDUCATIONAL FINANCIAL ACCOUNTING AND REPORTING ACT OF 2004

6-20-2202. Budget and expenditure report.

CASE NOTES

Budget Not Deficient.

School districts did not submit deficient budgets because they included within their budgeted revenue the uniform rate of tax in excess of the foundation-funding amount. These funds had to be returned solely to the districts from which they

were derived, and any withholding of categorical funds from the school districts based on the allegedly deficient budget was erroneous. *Kimbrell v. McCleskey*, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

SUBCHAPTER 23 — PUBLIC SCHOOL FUNDING ACT OF 2003

6-20-2306. Department of Education to provide funding — Adjustments for overpayments.

CASE NOTES

Excess Funds.

Education commissioner, a department of education, and a state treasurer were not authorized to distribute excess funds to another school district under § 26-80-101(b)(1)(B); the retention of revenue in excess of foundation funding resulted in variations, which were contemplated by

Ark. Const. art. 14, § 3(a). Moreover, the excess funds did not constitute an overpayment, such that the remedies in this section could have been implemented. *Kimbrell v. McCleskey*, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

CHAPTER 21

SCHOOL PROPERTY AND SUPPLIES

SUBCHAPTER 1 — GENERAL PROVISIONS

6-21-105. Braille and large print textbooks.

A.C.R.C. Notes. Acts 2012, No. 180, § 11, provided: “BRAILLE AND LARGE PRINT TEXTBOOKS. The State Board of Education shall make reasonable rules and regulations to implement the Braille and Large Print Textbooks appropriation and is hereby authorized to negotiate directly with publishers of Braille and Large Print Textbooks for the purchase of such

textbooks. The Arkansas School for the Blind (ASB) is authorized to use funds from this account for costs associated with providing Braille Textbooks and Large Print Textbooks to public schools.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 8 — ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES PROGRAM ACT

6-21-813. Inspections.

A.C.R.C. Notes. Acts 2012, No. 274, § 43, provided: “ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES PROGRAM. The Arkansas Department of Environmental Quality shall adopt policies before September 1, 2012 to ensure its cooperation regarding provision to the Division of Public School Academic Facilities and Transportation copies of the reports of inspections required under Arkansas Code § 6-21-813 (d) through (f) for the Arkansas Public School Academic Facilities Program Act.”

Acts 2012, No. 280, § 17, provided: “ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES PROGRAM. The Department of Health shall adopt policies before September 1, 2012 to ensure its cooperation regarding provision to the Division of Public School Academic Facilities and Transportation copies of the reports of inspections required under Arkansas Code § 6-21-813 (d) through (f) for the Arkansas Public School Academic Facilities Program Act.”

CHAPTER 23

ARKANSAS CHARTER SCHOOLS ACT OF 1999

SUBCHAPTER 5 — OPEN-ENROLLMENT PUBLIC CHARTER SCHOOLS — FUNDING

6-23-503. Use of funding.

A.C.R.C. Notes. Acts 2012, No. 269, § 21, provided: “OPEN-ENROLLMENT VIRTUAL CHARTER SCHOOL FUNDING RESTRICTIONS. Regardless of any provision of law to the contrary, no school district shall receive state funding for the 2012-2013 school year for those students who are included in the district’s average

daily membership for the previous school year but who are attending any open-enrollment charter school that uses internet, long-distance, or virtual technology as the primary method of teaching.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBTITLE 3. SPECIAL EDUCATIONAL PROGRAMS

CHAPTER 42

GIFTED AND TALENTED CHILDREN

SUBCHAPTER 3 — ARKANSAS SCHOOL FOR MATHEMATICS, SCIENCES, AND THE ARTS

A.C.R.C. Notes. Acts 2012, No. 223, § 25, provided: “SCHOOL FOR MATHEMATICS, SCIENCES AND THE ARTS TEACHER GRANT RELATED FUNDING PROVISION. Teachers of the School for Mathematics, Sciences, and the Arts who, in addition to fulfilling annual teach-

ing contract requirements also write grants, grant progress reports and write and publish papers may be authorized as additional annual compensation an amount up to 1/10 of their annual salary. Such additional compensation shall not be construed as exceeding the maximum sal-

ary authorized for said employees. The additional compensation authorized by this section shall not be paid from state general revenues or Educational Excel-

lence Trust Fund monies.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 43

ARKANSAS SCHOOL FOR THE BLIND AND ARKANSAS SCHOOL FOR THE DEAF

SUBCHAPTER 1 — GENERAL PROVISIONS

6-43-102. Powers and duties of board.

A.C.R.C. Notes. Acts 2012, No. 170, § 13, provided: "SHARED SERVICES. The Chief Fiscal Officer of the State and the State Treasurer are authorized to establish a joint paying account in the State Treasury, upon direction of the Board of Trustees for the Arkansas School for the Blind and the Arkansas School for the Deaf. The Board may transfer positions, funds and appropriations to the paying account from either school to serve both schools in the areas of Accounting, Personnel, Inventory, Safety and Health Services.

"Funding and appropriations for this account will be from transfers from the fund accounts and appropriations of each agency and shall be divided proportionately from each agency based on student population. Said funds shall be payable from the joint account as if the positions and other budgetary line items of appropriation had originally been established in the joint account. Supervision of this account and supervision of the positions within may come from either school as determined by the Board of Trustees.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 180, § 10, provided: "SHARED SERVICES. The Chief Fiscal Officer of the State and the State Treasurer are authorized to establish a joint paying account in the State Treasury, upon direction of the Board of Trustees for the Arkansas School for the Blind and the Arkansas School for the Deaf. The Board may transfer positions, funds and appropriations to the paying account from either school to serve both schools in the areas of Accounting, Personnel, Inventory, Safety and Health Services.

"Funding and appropriations for this account will be from transfers from the fund accounts and appropriations of each agency and shall be divided proportionately from each agency based on student population. Said funds shall be payable from the joint account as if the positions and other budgetary line items of appropriation had originally been established in the joint account. Supervision of this account and supervision of the positions within may come from either school as determined by the Board of Trustees.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-43-113. Compensation limitation.

A.C.R.C. Notes. Acts 2012, No. 170, § 8, provided: "ADDITIONAL SALARY/COMPENSATION PROVISION. No employee drawing a salary or other form of compensation from the Arkansas Schools for the Deaf or Blind shall be paid an

additional salary or receive additional compensation, other than reimbursement for actual expenses, from that agency, nor from any other agency or institution of higher education, except from the Superintendent's written certification to and

approval by the Chief Fiscal Officer of the State that the work performed by the employee for the other position does not interfere with the proper and required performance of the employee's primary duties, and that the combined salary payments from both positions will not exceed the maximum annual salary for whichever of the two positions has the higher authorized maximum annual salary.

"Any employee knowingly violating the provisions of this section shall be subject to immediate termination and shall be barred from employment by any agency or institution of the State of Arkansas for a period of not less than three (3) years or until such employee shall repay to the State of Arkansas any sums received by such employee in violation of this section, together with interest at a rate of ten percent (10%) per annum.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 180, § 9, provided: "ADDITIONAL SALARY/COMPENSATION PROVISION. No employee drawing a salary or other form of compensation from the Arkansas Schools for the Deaf or Blind shall be paid an additional salary or re-

ceive additional compensation, other than reimbursement for actual expenses, from that agency, nor from any other agency or institution of higher education, except from the Superintendent's written certification to and approval by the Chief Fiscal Officer of the State that the work performed by the employee for the other position does not interfere with the proper and required performance of the employee's primary duties, and that the combined salary payments from both positions will not exceed the maximum annual salary for whichever of the two positions has the higher authorized maximum annual salary.

"Any employee knowingly violating the provisions of this section shall be subject to immediate termination and shall be barred from employment by any agency or institution of the State of Arkansas for a period of not less than three (3) years or until such employee shall repay to the State of Arkansas any sums received by such employee in violation of this section, together with interest at a rate of ten percent (10%) per annum.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-43-116. Special allowance.

A.C.R.C. Notes. Acts 2012, No. 170, § 7, provided: "SPECIAL ALLOWANCE. The Arkansas Schools for the Deaf and Blind may make special allowances available to any employee who performs one of the following duties in addition to their normal duties:

"1) Teaching adult education classes, parent training, student tutorial services on weekends or evenings

"2) Coaching one or more sports

"3) Sponsoring a club or organization that involves additional hours outside of the normal working day

"4) Interpretive Services

"Compensation for additional duties may not exceed \$3,500 per school term for any one employee during each fiscal year. Such additional compensation shall not be construed as exceeding the maximum salary authorized for said employee.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 180, § 8, provided: "SPECIAL ALLOWANCE. The Arkansas Schools for the Deaf and Blind may make special allowances available to any employee who performs one of the following duties in addition to their normal duties:

"1) Teaching adult education classes, parent training, student tutorial services on weekends or evenings

"2) Coaching one or more sports

"3) Sponsoring a club or organization that involves additional hours outside of the normal working day

"4) Interpretive Services

"Compensation for additional duties may not exceed \$3,500 per school term for any one employee during each fiscal year. Such pay shall not be construed as exceeding the maximum salary authorized for said position.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 2 — ARKANSAS SCHOOL FOR THE BLIND**6-43-213. Salaries.**

A.C.R.C. Notes. Acts 2012, No. 170, § 14, provided: "TEACHER SALARY INCREASE. In the event that an act is enacted in which the public schools receive funds from the General Assembly to raise the salaries of teachers employed in the public school districts, the Arkansas School for the Deaf and the Arkansas School for the Blind shall be included.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 180, § 14, provided: "TEACHER SALARY INCREASE. In the event that an act is enacted in which the public schools receive funds from the General Assembly to raise the salaries of teachers employed in the public school districts, the Arkansas School for the Deaf and the Arkansas School for the Blind shall be included.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 3 — ARKANSAS SCHOOL FOR THE DEAF**6-43-305. Teachers generally.**

A.C.R.C. Notes. Acts 2012, No. 170, § 14, provided: "TEACHER SALARY INCREASE. In the event that an act is enacted in which the public schools receive funds from the General Assembly to raise the salaries of teachers employed in the public school districts, the Arkansas School for the Deaf and the Arkansas School for the Blind shall be included.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 180, § 14, provided: "TEACHER SALARY INCREASE. In the event that an act is enacted in which the public schools receive funds from the General Assembly to raise the salaries of teachers employed in the public school districts, the Arkansas School for the Deaf and the Arkansas School for the Blind shall be included.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-43-320. Shift differential.

A.C.R.C. Notes. Acts 2012, No. 170, § 9, provided: "SHIFT DIFFERENTIAL. For Arkansas School for the Deaf, shift work must begin not earlier than 2:00 p.m. and end no later than 8:00 a.m. the

following day.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-43-321. Maintenance, transportation, and security for the Arkansas School for the Blind.

A.C.R.C. Notes. Acts 2012, No. 170, § 12, provided: "MAINTENANCE/TRANSPORTATION/SECURITY. The Arkansas School for the Deaf shall be responsible for providing maintenance, transportation, and security for the Arkansas School for the Blind. The Arkansas

School for the Deaf is authorized to spend general revenue funds to provide for these services.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 45**ARKANSAS BETTER CHANCE PROGRAM**

A.C.R.C. Notes. Acts 2012, No. 269, § 22, provided: "BETTER CHANCE PROGRAM ADMINISTRATIVE FEES. The Department of Education is hereby authorized to expend a maximum of two percent (2%) of available funds for administration of the Better Chance Program. Up to 1.8% of available funds shall be used to administer the program and to monitor program grantees to ensure compliance with programmatic standards. Prior to the utilization of the remaining 0.2% of available funds, the Department of Education shall seek prior review and approval of the Arkansas Legislative Council or Joint Budget Committee by providing a written request to include the following: a) the Department's reason(s) for the use of the funds and b) the amount of funds that will be expended. The Department may contract with the Division of Child Care and Early Childhood Education to administer the program.

"Determining the maximum number of employees and the maximum amount of

appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

***SUBTITLE 4. VOCATIONAL AND TECHNICAL
EDUCATION*****CHAPTER 50****GENERAL PROVISIONS**

SUBCHAPTER 7 — ARKANSAS EXISTING WORKFORCE TRAINING ACT OF 1995

A.C.R.C. Notes. Acts 2012, No. 276, § 23, provided: "ADULT EDUCATION DISTRIBUTION. All funds that become available for Adult Education shall be distributed to those administrative units determined to be operating efficient and effective adult education programs, under criteria established by the State Board of Career Education. The criteria shall include the relative efficiency of administration of the program in the counties served and achievement of federal performance indicators. The State Board of Career

Education shall promulgate rules and regulations for the distribution of funds in accordance with criteria to be determined by the Board. In the distribution of funds to local units the Board shall consider performance in meeting state and federal performance indicators. Unallocated funds will be redistributed based upon need as determined by the State Board of Career Education.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 51

VOCATIONAL AND TECHNICAL SCHOOLS

A.C.R.C. Notes. Acts 2012, No. 276, § 25, provided: "SECONDARY TECHNICAL CENTER AID PROVISIONS.

"(a)(1) Secondary technical center aid shall be calculated and distributed by the Department of Career Education based upon each secondary technical center's eligible student full-time equivalent

count.

"(2) Secondary technical center aid shall not be based upon the percentage of total enrollment from any one sending school.

"(b) This section expires on June 30, 2013."

SUBCHAPTER 1 — GENERAL PROVISIONS

6-51-105. Priorities — Vocational-technical institutions.

A.C.R.C. Notes. Acts 2012, No. 119, § 5, provided: "PRIORITIES. A high priority of the University of Arkansas Community College at Batesville is to provide quality technical training programs, transfer programs, and workforce education.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 120, § 5, provided: "PRIORITIES. A high priority of the College of The Ouachitas shall be to combat illiteracy and to provide industrial training in the work place.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 122, § 5, provided: "PRIORITIES. A high priority of South Arkansas Community College shall be to combat illiteracy and to provide industrial training in the work place.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 173, § 5, provided: "PRIORITIES. A high priority of the Ozarka College shall be to combat illiteracy and to provide industrial training in the work place.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 176, § 5, provided: "PRI-

ORITIES. A high priority of the Black River Technical College shall be to combat illiteracy and to provide industrial training in the work place.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 188, § 8, provided: "PRIORITIES. A high priority of Mid-South Community College shall be to combat illiteracy and to provide industrial training in the work place concentrating on manufacturing industry needs in Crittenden County.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 190, § 5, provided: "PRIORITIES. A high priority of the Pulaski Technical College shall be to provide access to high quality education that promotes student learning and support the economic development of the state.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 193, § 5, provided: "PRIORITIES. A high priority of the Arkansas State University — Mountain Home shall be to combat illiteracy and to provide industrial training in the work place.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 215, § 5, provided: "PRI-

ORITIES. A high priority of the University of Arkansas Community College at Morrilton shall be to provide a well-qualified workforce through quality educational programs of occupational and technical education.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 231, § 5, provided: "PRIORITIES. Cossatot Community College of the University of Arkansas considers the following items HIGH PRIORITY and within the role and scope of the college:

"(1) The recruitment of underserved populations in the CCCUA service area, including but not limited to: Latinos, African Americans, Aging, and Non-Traditional students,

"(2) The development and offering of viable programs as defined by the Arkansas Department of Higher Education and the deletion of programs which are not viable,

"(3) The cultivating of relationships in the community that establishes more industry training and promotes economic development within the CCCUA service area,

"(4) The continued development of working relationships with area K-12 institutions to provide concurrent enrollment, Advanced Placement, technical training, and college readiness to these students,

"(5) The development of a comprehensive change in the way the college prepares students for college-level work, including the development of special mastery learning programs within remedial math and English courses,

"(6) The continued expansion of campus facilities to accommodate continued record growth in credit and non-credit programs.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 234, § 5, provided: "PRIORITIES. A high priority of the University of Arkansas Community College at Hope is to provide quality technical training programs, transfer programs, and workforce education.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 2 — ESTABLISHMENT AND ADMINISTRATION GENERALLY

A.C.R.C. Notes. Acts 2012, No. 247, § 35, provided: "COOPERATION AGREEMENTS. Any two-year institution of Higher Education that has its main or a satellite campus located within a twenty five mile radius of any four-year institution of higher education shall enter into a

written agreement with that four-year institution which must address duplication of services between the institutions.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 54

COLLEGE OF THE OUACHITAS

A.C.R.C. Notes. Acts 2012, No. 120, § 5, provided: "PRIORITIES. A high priority of the College of The Ouachitas shall be to combat illiteracy and to provide

industrial training in the work place.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBTITLE 5. POSTSECONDARY AND HIGHER EDUCATION GENERALLY

CHAPTER 60 GENERAL PROVISIONS

A.C.R.C. Notes. Acts 2012, No. 221, § 7, provided: “REALLOCATION OF RESOURCES. Upon determination by the president or chancellor of an institution of higher education that a reallocation of resources for purposes of reorganization or consolidation of administrative functions within the institution is necessary for efficient and effective operations of the institution, the president or chancellor, with approval of the institution’s board of trustees, may have the authority to transfer positions, appropriations and related funds between campuses, divisions, branches, and other budgetary units of the institution, after receiving prior approval of the Legislative Council or Joint Budget Committee. The transfers of positions, programs, or activities shall be used for those purposes for which the appropriations were approved by the General Assembly. The transfers, consolidations, or reorganizations which involve academic programs shall be reviewed by the Department of Higher Education prior to submission to the Legislative Council or Joint Budget Committee. Provided, however, that the institution shall be limited to submitting no more than two (2) individual transaction transfer requests during any fiscal year and shall be further limited to no more than five percent (5%) of the total General Revenue and Special Revenue appropriation, funding, positions specific to each institution and no Tobacco Settlement funds or appropriations may be reallocated pursuant to this section.

“Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for institutions of higher education each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for institutions of higher education and the general revenue allocations authorized for each fund and

fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that institutions of higher education may operate more efficiently if some flexibility is provided to institutions of higher education authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 247, § 17, provided: “REALLOCATION OF RESOURCES FOR INSTITUTIONS OF HIGHER EDUCATION. Upon determination by the president or chancellor of an institution of higher education that a reallocation of resources for purposes of reorganization or consolidation of administrative functions within the institution is necessary for efficient and effective operations of the institution, the president or chancellor, with approval of the institution’s board of trustees, may have the authority to transfer positions, appropriations and related funds between campuses, divisions, branches, and other budgetary units of the institution, after receiving prior approval of the Legislative Council or Joint Budget Committee. The transfers of positions, programs, or activities shall be used for those purposes for which the appropriations were approved by the General Assembly. The transfers, consolidations, or reorganizations which involve aca-

ademic programs shall be reviewed by the Department of Higher Education prior to submission to the Legislative Council or Joint Budget Committee. Provided, however, that the institution shall be limited to submitting no more than two (2) individual transaction transfer requests during any fiscal year and shall be further limited to no more than five percent (5%) of the total General Revenue and Special Revenue appropriation, funding, positions specific to each institution, and no Tobacco Settlement funds or appropriations may be reallocated pursuant to this section.

“Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for institutions of higher education each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for institutions of higher education and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that institutions of higher education may operate more efficiently if some flexibility is provided to institutions of higher education authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget

Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 247, § 34, provided: “STUDENT UNDERGRADUATE RESEARCH FELLOWSHIP (SURF) PROGRAM. The focus of the Student Undergraduate Research Fellowship (SURF) Program is the continued development of undergraduate academic research efforts at Arkansas colleges and universities. The Arkansas Department of Higher Education shall adopt rules and regulations necessary for the proper administration of the Student Undergraduate Research Fellowship Program. Administrative functions and responsibilities may include, but not necessarily be limited to, the development of eligibility criteria, collection of applications, coordination of student evaluations, distribution of public notices, and funding of grants for academic research purposes. Staff of the Arkansas Department of Higher Education shall administer this program. The Arkansas Department of Higher Education shall be authorized to expense costs associated with the administration of the program, from funds made payable from the Higher Education Grants Fund Account for the Student Undergraduate Research Fellowship Program as authorized in Section 4 of this Act.”

SUBCHAPTER 2 — ENROLLMENT AND TUITION

6-60-211. Tuition waiver for Arkansas National Guard soldiers and airmen — Tuition assistance for soldiers.

A.C.R.C. Notes. Acts 2012, No. 247, § 22, provided: “NATIONAL GUARD TUITION INCENTIVE PROGRAM. In addition to any other provisions of law, any student who receives assistance from the appropriation made for the “National Guard Tuition Incentive Program” in this Act shall repay any loans and/or assistance if the student receives a discharge

that is a less than Honorable Discharge. Priority for funding shall be given to students already receiving assistance from the National Guard Tuition Incentive Program.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 61

POSTSECONDARY INSTITUTIONS GENERALLY

SUBCHAPTER 1 — GENERAL PROVISIONS

A.C.R.C. Notes. Acts 2012, No. 247, § 27, provided: “AUDIT/REVIEW OF STATE SCHOLARSHIP FUNDS. Any post-secondary institution that receives state scholarship funds administered by the Arkansas Department of Higher Education shall be subject to audit/review of

such funds by the Division of Legislative Audit, upon approval of the Legislative Joint Audit Committee.
“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

6-61-127. Arkansas Higher Education Performance Reporting System.

A.C.R.C. Notes. Acts 2012, No. 247, § 28, provided: “AUDIT DATA. All post-secondary institutions shall provide to the Arkansas Department of Higher Education a copy of the Integrated Post-Secondary Education Data System (IPEDS) data within three weeks following the IPEDS

due date, which shall be subject to audit by the Arkansas Department of Higher Education.
“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 4 — GRANT PROGRAMS

6-61-402. Contracts and cooperation with Board of Control for Southern Regional Education.

A.C.R.C. Notes. Acts 2012, No. 247, § 39, provided: “SREB MINORITY DOCTORAL SCHOLARS PROGRAM REGULATIONS. The Department of Higher Education is authorized to promulgate

rules and regulations for the administration of the Southern Regional Education Board (SREB) Minority Doctoral Scholars program.”

SUBCHAPTER 5 — COMMUNITY COLLEGES GENERALLY

A.C.R.C. Notes. Acts 2012, No. 247, § 35, provided: “COOPERATION AGREEMENTS. Any two-year institution of Higher Education that has its main or a satellite campus located within a twenty five mile radius of any four-year institution of higher education shall enter into a

written agreement with that four-year institution which must address duplication of services between the institutions.
“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 62

PROPERTY AND FINANCES OF STATE INSTITUTIONS

SUBCHAPTER 7 — ARKANSAS COLLEGE SAVINGS BOND ACT

6-62-708. Bonds — Principal amount.

A.C.R.C. Notes. Acts 2012, No. 247, § 24, provided: “COLLEGE SAVINGS BONDS LIMITATIONS. The total principal amount of bonds to be issued during any fiscal biennium shall not exceed three-hundred million dollars (\$300,000,000), nor shall the principal amount of bonds outstanding at any time

have debt service requirements in excess of twenty-four million dollars (\$24,000,000) in any one fiscal year from all state revenue sources.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

6-62-727. Rules and regulations — Acts 1997, No. 1211.

A.C.R.C. Notes. Acts 2012, No. 247, § 23, provided: “COLLEGE SAVINGS BONDS. The Department of Higher Education shall adopt rules and regulations for the allocation of the funds reappropriated for the development of projects at State Institutions of Higher Education and the payment of project costs and expenses of the issuance of the bonds of the Arkansas College Savings General Obligation Bonds Program to ensure that funds are allocated and expended in a manner consistent with the provisions of the Internal Revenue Code applicable to the Arkansas College Savings General Obligation Bond Program (Program). The funds reappropriated for the development of projects at State Institutions of Higher

Education and the payment of project costs and expenses of the issuance of the bonds of the Arkansas College Savings General Obligation Bonds Program shall be allocated and expended pursuant to the provisions of Arkansas Code 6-62-701 et seq. and other laws of this State. The expenditure and allocation of funds shall be exempt from any other provisions of state law which conflicts with any provision of the rules and regulations which rules and regulations are required to ensure the compliance of the Program with the applicable provisions of the Internal Revenue Code.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 63

EMPLOYEES OF STATE INSTITUTIONS

A.C.R.C. Notes. Acts 2012, No. 257, § 42, provided: “CLINICAL EXPANSION AND RESEARCH POOL.

“(a) In order to address personnel needs emerging from expanding medical research and patient care issues and the necessity of recruiting and retaining qualified medical, research, and related support personnel, the University of Arkansas for Medical Sciences or its successor is authorized for the 2012-2013 fiscal

year a pool of seven hundred (700) ‘Clinical Expansion and Research Pool’ positions. These positions are to be used by the University of Arkansas for Medical Sciences in the event that the personal services needs resulting from unanticipated clinical or research programs that are initiated during the 2012-2013 fiscal year require additional positions, either in title, in classification, or in number, that are not authorized or contemplated by the

General Assembly in Section 1 of this Act.

“(b) The University of Arkansas for Medical Sciences is authorized to access the ‘Clinical Expansion and Research Pool’ positions authorized in this Section at any time during the fiscal year when it is determined by the Chancellor of the University of Arkansas for Medical Sciences, subject to the review and approval by the Board of Trustees, that the need for additional positions exists. Only Medical or research positions shall be established under this provision. The Chancellor of the University of Arkansas for Medical Sciences shall provide a quarterly report detailing the justification of allocation of positions from this ‘Clinical Expansion and Research Pool’ to the Chief Fiscal Officer of the State, to the Department of Higher Education, and to the Arkansas Legislative Council or Joint Budget Committee for review. The report shall also include an accounting of the names, titles and salaries of personnel who have been employed in positions established from this pool and the source and duration of funds associated with the positions.

“(c) If the University of Arkansas for Medical Sciences requests continuation of any ‘Clinical Expansion and Research Pool’ position(s) as established herein during the next fiscal year, the position(s) must be requested as a new position(s) in the agency’s budget request.

“(d) Determining the number of personnel to be employed by a state agency is the prerogative of the General Assembly and is usually accomplished by delineating the maximum number of personnel by identifying job titles and the maximum grade or salary attached to those titles. The General Assembly has determined that the University of Arkansas for Medical Sciences could be operated more efficiently if some flexibility is given to that institution. That flexibility is being accomplished by providing a position pool in Subsection (a) of this Section and since the General Assembly has granted the agency broad powers under the growth pool concept, it is both necessary and appropriate that the General Assembly maintain oversight of the utilization of the position pool by requiring review of the Legislative Council or Joint Budget Committee in the utilization of the position pool. Therefore, the requirement of review by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of review by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 3 — HIGHER EDUCATION EXPENDITURE RESTRICTION ACT

6-63-314. Extra help restrictions.

A.C.R.C. Notes. Acts 2012, No. 247, § 16, provided: “**EMERGENCY GRANTS & EXTRA HELP POOL.** An Institution of higher education that suffers an emergency/disaster event resulting in all or a significant portion of campus operations being interrupted, may request disaster assistance through the Arkansas Department of Higher Education. Upon the declaration of an emergency by the Governor, the institution may request, subject to the recommendation of the Director of the Department of Higher Education and approval of the Governor, a grant from the Disaster Relief Fund to assist in returning that campus to operation and/or to a sister

campus providing services to the students from the affected campus. Certified law enforcement officers employed by an institution of higher education may be granted jurisdiction at the sister institution, upon agreement of both institutions.

“The Department of Higher Education is authorized a pool of 500 extra help positions for use in such emergency situations. These positions may be assigned to the campus suffering the disaster event or to a sister campus providing services to the students from the affected campus. The Governor may waive the 1,500 hour limit of ACA 6-63-314 on these assigned extra help pool positions.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 64

UNIVERSITY OF ARKANSAS

SUBCHAPTER 1 — GENERAL PROVISIONS

6-64-109. Housing allowance for chaplain.

A.C.R.C. Notes. Acts 2012, No. 257, § 36, provided: "CHAPLAIN HOUSING ALLOWANCE. The Chancellor of the University of Arkansas for Medical Sciences may designate up to forty-five percent (45%) of the regular gross salary (or stipend) of a minister or other clergy employed as a Chaplain or appointed as a Chaplain Resident, as a housing allow-

ance, to the extent used by the person to rent or provide a home, according to the guidelines of the Internal Revenue Service Code, Section 107 and the Arkansas Code 26-51-404(b)(9).

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 3 — CAMPUSES ESTABLISHED

6-64-301. Little Rock — Establishment.

A.C.R.C. Notes. Acts 2012, No. 195, § 6, provided: "SPECIAL ALLOWANCES. For the purpose of providing necessary allowances for housing and other unusual expenses incurred by or in behalf of the athletic director, assistant athletic directors, head coaches, and assistant coaches at the University of Arkansas at Little Rock, the Board of Trustees may make special allowances available therefor in such amounts as the Board of Trustees may determine as justified, an equitable allowance in view of the unusual and exacting duties of said athletic director, assistant athletic directors, head coaches, and assistant coaches, and for the purpose of providing such allowances, the Board of Trustees is authorized to expend from the auxiliary income of the University of Arkansas at Little Rock, which is derived from athletic event receipts, an amount not to exceed twenty thousand dollars (\$20,000) in the aggregate for such pur-

poses during each fiscal year for the athletic director and head coaches, and ten thousand dollars (\$10,000) in the aggregate for such purposes during each fiscal year for the assistant athletic directors and assistant coaches. Provided that any such allowances shall be in addition to the regular salary of such athletic director, assistant athletic directors, head coaches and assistant coaches, as established herein provided that the amount of such allowance shall not exceed ten thousand dollars (\$10,000) per annum for any one salaried position. Further, if the special allowance funds authorized herein are utilized the University of Arkansas at Little Rock shall report annually to the Legislative Joint Auditing Committee the exact disposition of those special allowances funds.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 4 — MEDICAL DEPARTMENT GENERALLY

A.C.R.C. Notes. Acts 2012, No. 257, § 44, provided: "PSYCHIATRIC RESEARCH INSTITUTE & DEPARTMENT

OF PEDIATRICS REPORTS. The University of Arkansas for Medical Sciences shall report quarterly each fiscal year to the

Legislative Council on program activities and the expenditure of funds from the Psychiatric Research Institute and Department of Pediatrics appropriation for Building Effective Services for Trauma

programs for children and adolescents.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-64-406. Admissions generally.

A.C.R.C. Notes. Acts 2012, No. 257, § 35, provided: "ADMISSION POLICY. The University of Arkansas for Medical Sciences shall admit one hundred fifty (150) freshman students in each fiscal year into the College of Medicine. Provided that no funds shall be expended to fund the positions of Chancellor, Dean of Medicine and any academic position until

the Chancellor and Dean of Medicine certify to the Arkansas Legislative Council that the provision of this Section relating to the fiscal year requirement for one hundred fifty (150) freshman student admissions has been implemented.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-64-413. Special allowances.

A.C.R.C. Notes. Acts 2012, No. 257, § 27, provided: "SPECIAL ALLOWANCES — PATIENT CARE & RESEARCH FACULTY. The Board of Trustees may make special allowances available, in such amounts as the Board may determine or justify equitable in view of the exacting duties which are involved, as a part of the salaries of the physicians, dentists, and other professional faculty employed by the University of Arkansas for Medical Sciences from receipts of professional income in the care of patients and/or funds received from federal agencies, foundations, and other private sponsors in support of research. Provided that any such allowance shall not exceed, for any employee, an amount equal to two and one half (2 & ½) times that portion of the salary authorized by the General Assembly to be paid from the University of Arkansas Medical Center Fund.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 257, § 28, provided: "SPECIAL ALLOWANCES — RECRUITMENT. The Board of Trustees of the University of Arkansas is hereby authorized to make available to the President of the University of Arkansas special allowances

in such amounts as the Board may determine to be justified at the University of Arkansas for Medical Sciences, for the use of the Chancellor and his deans, representatives, department heads, and directors at the University of Arkansas for Medical Sciences in recruitment of faculty and staff members. Upon approval by the President and the Board of Trustees, such funds shall be administered by the Chancellor, who shall assure that the total amount expended for such purposes does not exceed one hundred fifty thousand dollars (\$150,000) each fiscal year or so much thereof as may be authorized by the Board of Trustees. The funds authorized by this Section shall come from a source other than state tax dollars appropriated by the General Assembly or charges made to students for tuition, fees, room and board, or other purposes. Each year the Chancellor shall furnish to the President of the University of Arkansas, the Board of Trustees, and the Arkansas Legislative Joint Auditing Committee a report showing for each expenditure the date, the amount, the names of persons to whom the expenditure was made, and the purpose for which the expenditure was made.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-64-414. Special language and restrictions — Area health education centers.

A.C.R.C. Notes. Acts 2012, No. 257, § 29, provided: "AREA HEALTH EDUCATION CENTERS — REPORTS. The Chancellor at the University of Arkansas for Medical Sciences shall make annual progress reports of AHEC programs to the Governor, the Legislative Council, and other interested interim committees of the General Assembly regarding the achieve-

ments, the expansion of the aforementioned programs, and amounts expended for the Area Health Education Centers. The reports shall also include the practice locations of the students participating in the programs.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-64-420. UAMS — Adult Sickle Cell Disease Program.

A.C.R.C. Notes. Acts 2012, No. 257, § 22, provided: "UAMS — ADULT SICKLE CELL DISEASE PROGRAM. There is hereby established a new program for the comprehensive care of Adult Sickle Cell Disease to be known as the University of Arkansas for Medical Sciences Adult Sickle Cell Disease Program. The program will facilitate the continued development of adult sickle cell disease treatment, preventive care, education, and training for health care professionals

and related personnel utilizing the University of Arkansas for Medical Sciences' Area Health Education Centers throughout the State and Center for Distance Health. Funding for the Program will be from general revenue and cash funds from fees for services, donations, grants, and federal funds. The University of Arkansas for Medical Sciences will not assume responsibility for funding the Program until such time as the General Assembly appropriates and funds the Program."

6-64-421. Center for Dental Education.

A.C.R.C. Notes. Acts 2012, No. 257, § 24, provided: "UAMS — CENTER FOR DENTAL EDUCATION. There is hereby established a new center in Arkansas for Dental Education in cooperation with the University of Tennessee Dental School, the University of Arkansas for Medical Sciences and Arkansas Children's Hospital. The Center Shall be known as the University of Arkansas for Medical Sci-

ences Center for Dental Education.

"The Center will facilitate the continued development of dental education, its specialties and services for the citizens of Arkansas.

"No appropriation is requested at this time and UAMS will not assume responsibility for its funding until such time as the General Assembly appropriates and funds the Center."

SUBCHAPTER 10 — FINANCES

6-64-1004. Athletics Instruction Fund.

A.C.R.C. Notes. Acts 2012, No. 223, § 22, provided: "ADDITIONAL PAYMENTS AUTHORIZED. The Board of Trustees of the University of Arkansas is hereby authorized to make additional payments to head and assistant coaches at the University of Arkansas, Fayetteville, from revenues generated by contracts with vendors of athletic apparel, shoes, multimedia rights, and other products in such amounts as may be estab-

lished by the Board of Trustees for performance by the coaches of consulting and other obligations pursuant to contracts between the University and such vendors. Such additional payments to head and assistant coaches shall not be considered salary and shall not be deemed or construed to exceed the maximum salaries established for such coaches by the General Assembly. Nothing in this section shall be construed to reduce or eliminate

the authority granted elsewhere in Arkansas statutes for the payment of allowances or bonuses to coaches at the University of Arkansas, Fayetteville.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

6-64-1012. Additional compensation for athletic department.

A.C.R.C. Notes. Acts 2012, No. 223, § 21, provided: “**SPECIAL ALLOWANCES.** For the purpose of providing necessary allowances for housing and other unusual expenses incurred by or on behalf of the athletic director, associate and assistant athletic directors, head coaches, assistant coaches, offensive coordinators, defensive coordinators, and head trainers in the Athletic Department at the University of Arkansas, Fayetteville, the Board of Trustees may make special allowances available therefore in such amounts as the Board of Trustees may determine as justified, an equitable allowance in view of the unusual and exacting duties of said athletic directors, associate and assistant athletic directors, head coaches, assistant coaches, offensive coordinators, defensive coordinators, and head trainers in the Athletic Department at the University of Arkansas, Fayetteville, and for the purpose of providing such allowances, the Board of Trustees is authorized to expend from the auxiliary income of the University of Arkansas, Fayetteville, which is derived from athletic event receipts, or from contributions from sources other than state funds, an amount not to exceed ten thousand dollars (\$10,000) each for such purposes during each fiscal year for the athletic directors, associate athletic directors, and head coaches, and an amount not to exceed one thousand dol-

lars (\$1,000) each for the assistant athletic directors, assistant coaches, offensive coordinators, defensive coordinators, and head trainers. Any such allowances shall be in addition to the regular salary of such athletic directors, associate and assistant athletic directors, head coaches and assistant coaches. Further, if the special allowance funds authorized herein are utilized the University of Arkansas, Fayetteville shall report annually to the Arkansas Legislative Joint Auditing Committee the exact disposition of those special allowance funds. In recognition of the extra work involved in the participation of intercollegiate athletic teams in post-season competition, and to promote exceptional achievement in the total sports program, the Chancellor of the University of Arkansas, Fayetteville, in accordance with policies issued by the Board of Trustees of the University of Arkansas, may approve additional compensation of up to one month’s salary for the Athletic Department and Band personnel when any athletic team participates in post-season competition or achieves exceptional recognition, which shall be in addition to the regular salaries authorized by law, provided that the additional compensation shall be paid from contributions from sources other than public funds.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 65

AGRICULTURAL COLLEGES

SUBCHAPTER 2 — ARKANSAS STATE UNIVERSITY

6-65-202. Powers and duties of board.

A.C.R.C. Notes. Acts 2012, No. 221, § 8, provided: “**LEASES.** Notwithstanding any law to the contrary, the Board of Trustees of Arkansas State University may hereafter lease facilities for opera-

tions for room and board purposes for students only in any manner and upon terms the board deems to be in the best interest of the university. Action taken under this act shall be by written resolu-

tion adopted by at least a majority of the members of the board.

“The provisions of this section shall be

in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 3 — ARKANSAS TECH UNIVERSITY

A.C.R.C. Notes. Acts 2012, No. 194, § 6, provided: “SPECIAL ALLOWANCES. The Board of Trustees of Arkansas Tech University may make special allowances available to any coach who coaches more than one sport in an amount not to exceed \$10,000 per fiscal year for any one coach. Further, if the special allowance funds authorized herein are utilized, Arkansas Tech University shall report annually to the Legislative Joint Auditing Committee the exact disposition of those special allowance funds.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 194, § 7, provided: “ARKANSAS TECH INSTITUTE. The Arkansas Tech Institute (ATI) shall be administered under the direction of Arkansas

Tech University. Utilizing a multidisciplinary collaboration of professionals, ATI shall explore, develop, implement, and evaluate new and better ways to integrate the teaching, study and performance of business, engineering, emergency management, and computer sciences for academic, economic, and economic development purposes in Arkansas. ATI priorities shall include, but are not limited to, economic development, technology development, and ‘cyber-park’ development. Arkansas Tech University shall make annual reports to the Arkansas Legislative Council on all matters of funding, existing programs, and services offered through ATI.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 4 — SOUTHERN ARKANSAS UNIVERSITY

A.C.R.C. Notes. Acts 2012, No. 197, § 6, provided: “TUITION REIMBURSEMENT. The Board of Trustees of Southern Arkansas University shall be authorized to reimburse tuition, fees, and other educational related expenses of current faculty who seek additional education levels

that will benefit the university in meeting accreditation and professional standards. Reimbursement shall be authorized only when the reimbursement request has been documented by the institution to meet critical shortage instructional areas.”

CHAPTER 66

HENDERSON STATE UNIVERSITY

A.C.R.C. Notes. Acts 2012, No. 267, § 5, provided: “SPECIAL ALLOWANCE. The Board of Trustees of Henderson State University may make special allowances available to any coach who coaches more than one sport in an amount not to exceed \$10,000 per fiscal year for any one coach. Further, if the special allowance funds

authorized herein are utilized, Henderson State University shall report annually to the Legislative Joint Auditing Committee the exact disposition of those special allowance funds.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 67

UNIVERSITY OF CENTRAL ARKANSAS

A.C.R.C. Notes. Acts 2012, No. 150, § 6, provided: "SPECIAL ALLOWANCE. The Board of Trustees of the University of Central Arkansas may make special allowances available to any coach who coaches more than one sport in an amount not to exceed ten thousand dollars (\$10,000) per fiscal year for any one coach. Further, the Board of Trustees of the University of Central Arkansas is hereby authorized to make additional payments to head coaches at the University of Central Arkansas from revenues generated by contracts with vendors of athletic apparel, shoes and other products in such amounts as may be established by the Board of Trustees for performance by the coaches of consulting and other obligations pursuant to contracts between the University and

such vendors. Such additional payments to head coaches shall not be considered salary and shall not be deemed or construed to exceed the maximum salaries established for such coaches by the Act. Nothing in this section shall be construed to reduce or eliminate the authority granted elsewhere in Arkansas statutes for the payment of allowances or bonuses to coaches at the University of Central Arkansas. Further, if the special allowance funds authorized herein are utilized, the University of Central Arkansas shall report annually to the Legislative Joint Auditing Committee the exact disposition of those special allowance funds.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

6-67-112. Limitation of expenditures.

A.C.R.C. Notes. Acts 2012, No. 150, § 8, provided: "TUITION REIMBURSEMENT. The Board of Trustees of the University of Central Arkansas shall be authorized to reimburse tuition, fees, and other educational related expenses of current faculty who seek additional educa-

tion levels that will benefit the university in meeting accreditation and professional standards. Reimbursement shall be authorized only when the reimbursement request has been documented by the institution to meet critical shortage instructional areas."

6-67-113. Payroll deductions.

A.C.R.C. Notes. Acts 2012, No. 150, § 7, provided: "MEMBERSHIP AUTHORIZATION. The Board of Trustees of the University of Central Arkansas is hereby authorized to enact voluntary payroll deductions for employees using on-campus programs and facilities. All such deductions shall be entirely voluntary in nature, shall require written authorization from

each participant electing to use such deductions and shall not be made on a pre-tax basis. Nothing in this section shall be construed to reduce or eliminate the payroll regulations established elsewhere in Arkansas Statutes.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBTITLE 6. POSTSECONDARY EDUCATION — FINANCIAL ASSISTANCE PROGRAMS

CHAPTER 80

GENERAL PROVISIONS

A.C.R.C. Notes. Acts 2012, No. 247, § 26, provided: “FINANCIAL AID PROGRAMS REPORTING. The Arkansas Department of Higher Education shall report by May 30 to the House and Senate Interim Committees on Education the budgeted allocation for each financial aid

program funded through the Higher Education Grants Fund Account for the upcoming fiscal year and projections for the following year.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 81

STUDENT LOANS

SUBCHAPTER 1 — GENERAL PROVISIONS

6-81-102. Arkansas Student Loan Authority — Powers and duties.

A.C.R.C. Notes. Acts 2012, No. 96, § 3, provided: “TRANSFER OF CONTRACT EMPLOYEE SALARIES. Any individual employed through Edfinancial Services LLC and who is a contract worker with the Arkansas Student Loan Authority without a break in service as defined by the State of Arkansas, shall be eligible to

transfer their annual salary, as defined in the contractual agreement with the Arkansas Student Loan Authority, upon the date of transfer. Effective upon the date of transfer, the individual shall become an employee of the State of Arkansas governed by all applicable rules and regulations of the State of Arkansas.”

SUBCHAPTER 7 — RURAL MEDICAL PRACTICE STUDENT LOANS AND SCHOLARSHIPS

6-81-715. Medical school graduates — Community match contract — Eligibility for community match loans.

CASE NOTES

ANALYSIS

Defenses.
Standing.

Defenses.

In a breach of contract action by the Arkansas Rural Medical Practice Student Loan and Scholarship Board, a doctor was

entitled to assert common law breach of contract defenses because §§ 6-81-715 to 6-81-717 did not reveal a clear expression of legislative intent to deprive community-match-scholarship recipients of the ability to assert common-law claims and defenses. *Nelson v. Ark. Rural Med. Practice Loan & Scholarship Bd.*, 2011 Ark. 491, — S.W.3d — (2011).

Standing.

Doctor who had allowed his Arkansas medical license to lapse did not have standing to obtain a judgment declaring that § 17-95-409(b) did not apply to contracts under the Community Match Loan and Scholarship Program, established un-

der §§ 6-81-715 to 6-81-717, because the Declaratory Judgment Statute, § 16-111-101 et seq., was applicable only where there was a present actual controversy. Nelson v. Ark. Rural Med. Practice Loan & Scholarship Bd., 2011 Ark. 491, — S.W.3d — (2011).

CHAPTER 82
SCHOLARSHIPS

**SUBCHAPTER 15 — ARKANSAS GEOGRAPHICAL CRITICAL NEEDS MINORITY
TEACHER SCHOLARSHIP PROGRAM**

A.C.R.C. Notes. Acts 2012, No. 247, § 37, provided: “APPROPRIATION TRANSFER PROCEDURES — AR GEOGRAPHICAL CRITICAL NEEDS MINORITY TEACHER SCHOLARSHIP PROGRAM. The Director of the Arkansas Department of Higher Education shall determine the amount available, up to \$200,000 per fiscal year, to fund the Arkansas Geographical Critical Needs Minority Teacher Scholarships and shall certify to the Chief Fiscal Officer of the State and the State Treasurer such amount as is required to be transferred from the Higher Education Grants Fund Account.

Upon receiving such certification, the Chief Fiscal Officer of the State and the State Treasurer shall cause to be transferred the necessary funds and appropriation to the fund account of the University of Arkansas at Pine Bluff for implementation of this program. The University of Arkansas at Pine Bluff may use up to twenty percent (20%) of the funds and appropriation for administration of the program.
“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

TITLE 7
ELECTIONS

CHAPTER 4
**BOARDS OF ELECTION COMMISSIONERS AND OTHER
ELECTION OFFICERS**

SUBCHAPTER 1 — GENERAL PROVISIONS

**7-4-101. State Board of Election Commissioners — Members —
Officers — Meetings.**

A.C.R.C. Notes. Acts 2012, No. 54, § 7, provided: “TRANSFER OF FUNDS. If the State Board of Election Commissioners is required to pay the expenses for any state supported preferential primary election,

general primary election, nonpartisan judicial general election, statewide special election or special primary election and funds are not available to pay for such elections, the Director of the State Board

of Election Commissioners shall certify to the Chief Fiscal Officer of the State the amount needed to pay the expenses of the election(s). Upon the approval of the Chief Fiscal Officer of the State, the amount certified shall be transferred from the Budget Stabilization Trust Fund to the Miscellaneous Agencies Fund Account of the State Board of Election Commissioners. All unused funds transferred under this provision shall be transferred back to

the Budget Stabilization Trust Fund at the end of each fiscal year. The Chief Fiscal Officer of the State shall initiate the necessary transfer documents to reflect all such transfers upon the fiscal records of the State Auditor, the State Treasurer and the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect from July 1, 2012 through June 30, 2013."

CHAPTER 5

ELECTION PROCEDURE GENERALLY

SUBCHAPTER 1 — GENERAL PROVISIONS

7-5-106. Runoff elections for county and municipal officers.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

SUBCHAPTER 2 — PREELECTION PROCEEDINGS

7-5-201. Voter qualification.

RESEARCH REFERENCES

ALR. Validity of Statute Limiting Time Period for Voter Registration. 56 A.L.R.6th 523.

Validity of Residency and Precinct-Specific Requirements of State Voter Registration Statutes. 57 A.L.R.6th 419.

7-5-207. Ballots — Names included — Draw for ballot position.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests. 60 A.L.R.6th 481.

Construction and Application of Stat-

utes and Ordinances Concerning Establishment of Residency, as Condition for Running for Municipal Office. 74 A.L.R.6th 209.

SUBCHAPTER 6 — PAPER BALLOTS AND ELECTRONIC VOTE TABULATING DEVICES

7-5-601. Paper ballots — Form.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Requirements for Placement of Independent Candidates for United States Senate on Ballot. 59 A.L.R.6th 111.

SUBCHAPTER 7 — RETURNS AND CANVASS

7-5-703. Votes for United States Congress — Tie vote.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

7-5-704. Votes for legislative, judicial, and executive officers — Tie vote.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

SUBCHAPTER 8 — ELECTION CONTESTS

7-5-801. Right of action — Procedure.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests. 60 A.L.R.6th 481.

CHAPTER 6

CAMPAIGN PRACTICES

SUBCHAPTER 2 — CAMPAIGN FINANCING

7-6-203. Contributions — Limitations — Acceptance or solicitation — Use as personal income — Disposition.

RESEARCH REFERENCES

ALR. Construction and Application of Supreme Court's Holding in *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 2010 U.S. LEXIS 766, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166

(2010), That Government May Not Prohibit Independent and Indirect Corporate Expenditures on Political Speech. 65 A.L.R.6th 503.

Constitutional Challenges to Compelled Speech — Particular Situations or Circumstances. 73 A.L.R.6th 281.

7-6-205. Contributions made indirectly, anonymously, or under assumed names.

RESEARCH REFERENCES

ALR. Construction and Application of Supreme Court's Holding in *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 2010 U.S. LEXIS 766, 187 L.R.R.M.

(BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), That Government May Not Prohibit Independent and Indirect Corporate Expenditures on Political Speech. 65 A.L.R.6th 503.

CHAPTER 7

NOMINATIONS AND PRIMARY ELECTIONS

SUBCHAPTER 1 — METHODS OF NOMINATION

7-7-101. Selection of nominees.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Requirements for Placement of Independent Candidates for

United States Senate on Ballot. 59 A.L.R.6th 111.

7-7-103. Filing as an independent — Petitions — Disqualification.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Requirements for Placement of Independent Candidates for

United States Senate on Ballot. 59 A.L.R.6th 111.

CHAPTER 8

FEDERAL ELECTIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

7-8-104. Filling vacancies in the House of Representatives.

RESEARCH REFERENCES

ALR. Construction and Application of Vacancies in House of Representatives Clause of United States Constitution, U.S.

Const. Art. I, § 2, cl. 4, and State Provisions Concerning Such Elections. 62 A.L.R.6th 143.

CHAPTER 9

INITIATIVES, REFERENDA, AND CONSTITUTIONAL AMENDMENTS

SUBCHAPTER 1 — PETITION AND ELECTION PROCEDURE

7-9-104. Form of initiative petition — Sufficiency of signatures.

CASE NOTES

Sufficiency of Petition.

Because the initiative sponsors' revised ballot title was something clearly different than the original ballot title, no signature collected under the former title may support certification of the revised ballot

title under Ark. Const. Amend. 7, § 7-9-106(a), or subsection (a) of this section; the Secretary of State's certification was vacated and any votes cast could not be counted. *Walmsley v. Martin*, 2012 Ark. 370, — S.W.3d — (2012).

7-9-106. Required attachments to petitions.

CASE NOTES

In General.

Because the initiative sponsors' revised ballot title was something clearly different than the original ballot title, no signature collected under the former title may support certification of the revised ballot

title under Ark. Const. Amend. 7, subsection (a) of this section, or § 7-9-104(a); the Secretary of State's certification was vacated and any votes cast could not be counted. *Walmsley v. Martin*, 2012 Ark. 370, — S.W.3d — (2012).

7-9-111. Determination of sufficiency of petition — Corrections.

CASE NOTES

ANALYSIS

Construction.
Purpose.

Construction.

Pursuant to the enabling legislation, this section and §§ 7-9-125(8), 7-9-402(2)(A)(9), that the corporation as sponsor had standing to invoke the Arkansas Supreme Court's jurisdiction. *Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

Purpose.

Under Ark. Const. Art. 5, § 1, Amend. 7 and subsection (d) of this section, a peti-

tion had to on its face contain, at the time of the filing, the required signatures, and in order to qualify for additional time, the petition had to contain a sufficient number of signatures pursuant to the state-wide and county-wide requirement, before the thirty-day provision to correct deficiencies applied; the corporation failed to provide the court with any evidence of the validity of its petition. *Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

7-9-125. Definitions — Prohibition of profit — Penalties — Freedom of information.

CASE NOTES

Standing.

Pursuant to the enabling legislation, subdivision (8) of this section and §§ 7-9-111, 7-9-402(2)(A)(9), that the corporation

as sponsor had standing to invoke the Arkansas Supreme Court's jurisdiction. *Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

SUBCHAPTER 4 — DISCLOSURE FOR MATTERS REFERRED TO VOTERS

7-9-402. Definitions.

CASE NOTES

Standing.

Pursuant to the enabling legislation, §§ 7-9-111, 7-9-125(8), and subdivision (2)(A)(9) of this section, that the corpora-

tion as sponsor had standing to invoke the Arkansas Supreme Court's jurisdiction. *Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

TITLE 8

ENVIRONMENTAL LAW

CHAPTER.

6. - DISPOSAL OF SOLID WASTES AND OTHER REFUSE.

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

8-1-103. Powers and duties.

A.C.R.C. Notes. Acts 2012, No. 274, § 37, provided: "REPORTING REQUIREMENTS. The Department shall present the following data to Legislative Council quarterly, due by the 15th day of the month following the quarter, beginning July 15, 2012:

"a) Number and type of environmental permits currently authorized by the Department and the Pollution Control and Ecology Commission in each environmental permit category;

"b) Total funds collected from permit fees for each permit category and the percent increase or decrease in permit fees annually;

"c) Description of each environmental permit application pending in each environmental permit category, the number of days each permit has been pending, and the reasons for delays in issuing permits for each permit that has been pending for more than 45 days;

"d) Number and type of enforcement actions initiated by the Department, the geographic location of each violation and the total fines and collections from Supplemental Environmental Projects, the percent increase or decrease in fines levied annually and

"e) Description of all pending rulemaking activities and justifications thereof, in-

cluding economic impact and environmental benefit analysis.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 274, § 42, provided: "FAYETTEVILLE SHALE QUARTERLY REPORTING. The Arkansas Department of Environmental Quality shall report on a quarterly basis to the Arkansas Legislative Council or the Joint Budget Commit-

tee the number of inspections, any hearings, findings, orders, fines, or other agency regulatory or enforcement actions or activities involving the Fayetteville Shale. The quarterly reports shall be provided no later than the 15th day of the month immediately following the end of each quarter.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 6

DISPOSAL OF SOLID WASTES AND OTHER REFUSE

SUBCHAPTER.

6. SOLID WASTE MANAGEMENT AND RECYCLING FUND ACT.

SUBCHAPTER 6 — SOLID WASTE MANAGEMENT AND RECYCLING FUND ACT

SECTION.

8-6-607. Collection of fees.

Effective Dates. Acts 2012, No. 283, § 15: July 1, 2012. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2012 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2012 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2012."

8-6-607. Collection of fees.

Fees imposed under the separate provisions of this subchapter shall be collected as follows:

(1) Each landfill permittee and each transporter shall submit to the Arkansas Department of Environmental Quality on or before January 15, April 15, July 15, and October 15 of each year a quarterly report that accurately states the total weight or volume of solid waste received at the landfill or transported out of state during the quarter just completed;

(2) On or before January 15, April 15, July 15, and October 15 of each year, each landfill permittee and solid waste transporter shall pay to the department the full amount of disposal fees due for the quarter just completed;

(3) Except as provided in subdivisions (4) and (5) of this section, the disposal and transportation fees collected under this section shall be special revenues and shall be deposited in the State Treasury to the credit of the Solid Waste Management and Recycling Fund for administrative support of the State Marketing Board for Recyclables;

(4)(A) Twenty-five percent (25%) of the disposal fees collected from landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry shall be deposited into a special fund to be created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State and to be known as the “Marketing Board Fund”.

(B) The Marketing Board Fund shall be administered by the department and used by the board for the administration and performance of the board’s duties; and

(5) Beginning July 1, 2012, excluding the disposal fees that are to be deposited into the Marketing Board Fund under subdivision (4) of this section, the first one hundred twenty-five thousand dollars (\$125,000) of the fees collected each fiscal year under this section shall be deposited into the State Treasury and credited to the Crime Information System Fund to be used exclusively for the scrap metal log book program.

History. Acts 1989, No. 849, § 7; 1989, No. 934, § 7; 1991, No. 755, § 2; 1993, No. 1127, § 3; 1995, No. 511, § 2; 2012, No. 283, § 10.

substituted “under” for “pursuant to” in the introductory language and in (3); substituted “subdivisions (4) and (5)” for “subdivision (4)” in (3); and added (5).

Amendments. The 2012 amendment

TITLE 9

FAMILY LAW

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 2

CHANGE OF NAME

9-2-101. Name change — Procedure.

CASE NOTES

Contest.

Because a child might encounter difficulties, harassment, or embarrassment from bearing the father’s surname (since the father was incarcerated in relation to the mother’s death), and because the fa-

ther had not made any serious attempts at visiting the child, it was in the child’s best interests to change the child’s surname. Walker v. Burton, 2011 Ark. App. 439, — S.W.3d — (2011).

SUBTITLE 2. DOMESTIC RELATIONS

CHAPTER 9

ADOPTION

SUBCHAPTER 2 — REVISED UNIFORM ADOPTION ACT

9-9-204. Who may adopt.

RESEARCH REFERENCES

ALR. Adoption of Child by Same-Sex Partners. 61 A.L.R.6th 1.

9-9-206. Persons required to consent to adoption — Consideration for relinquishing minor for adoption.

CASE NOTES

ANALYSIS

Application.
Parents.
Refusal to Consent.

Application.

It was not erroneous for a trial court to terminate a mother's parental rights to the mother's children without obtaining the children's consent, under subdivision (a)(5) of this section, to the children's adoption because (1) the issue was first raised on appeal, and (2) the statute did not apply to termination proceedings in dependency-neglect cases. *Brabon v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 2, — S.W.3d — (2012).

Court properly denied appellants' petition for adoption because the state, the child's legal guardian, did not consent; additionally, the child had to repeat a grade while residing with appellants, and the child's personality, behavior, and performance at school improved following her removal from appellants' home. The court found that the adoptive parent placed and would place an emphasis on meeting the child's educational needs, that she was

devoted to the child, and that she had a loving and appropriate home. *Cowan v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 576, — S.W.3d — (2012).

Parents.

Trial court erred in granting a petition for adoption and in holding that the putative father's consent was not required because the birth mother clearly thwarted the father's efforts to comply with subdivision (a)(2) of this section; the father not only filed with the putative-father registries in four states but also filed paternity actions in both Texas and Arkansas. In re *Baby Boy B.*, 2012 Ark. 92, — S.W.3d — (2012).

Refusal to Consent.

Evidence did not support a finding that the Arkansas Department of Human Services (DHS) unreasonably withheld its consent to appellants' adoption of a child under subdivision (a)(3) of this section; appellants' adult son lived in their home and an uncle lived in substandard housing on the property without DHS's knowledge while appellants were foster parents. *Lewis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 347, — S.W.3d — (2012).

9-9-207. Persons as to whom consent not required.**CASE NOTES****ANALYSIS**

Consent Required.

Failure to Communicate or Support.

Proof.

Unreasonable Withholding of Consent.

Consent Required.

Court properly denied appellants' petition for adoption because the state, the child's legal guardian, did not consent; additionally, the child had to repeat a grade while residing with appellants, and the child's personality, behavior, and performance at school improved following her removal from appellants' home. The court found that the adoptive parent placed and would place an emphasis on meeting the child's educational needs, that she was devoted to the child, and that she had a loving and appropriate home. *Cowan v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 576, — S.W.3d — (2012).

Failure to Communicate or Support.

Because a father failed to provide child support for only nine months, his consent was required for adoption of the child under subdivision (a)(2) of this section. *Havard v. Clark*, 2011 Ark. App. 734, — S.W.3d — (2011).

Trial court did not err under subdivision (a)(2) of this section in granting the adoption of a child without the mother's consent because the mother failed significantly without justifiable cause to support the child for one year; she had not paid any support in several years. She made no

effort to contribute to the child's support even after she obtained a job. *Lucas v. Jones*, 2012 Ark. 365, — S.W.3d — (2012).

It is not required that a parent fail "totally" in their obligations in order to fail "significantly" within the meaning of subdivision (a)(2) of this section. It only means that the failure must be significant, as contrasted with an insignificant failure. *Lucas v. Jones*, 2012 Ark. 365, — S.W.3d — (2012).

Proof.

In granting a petition for a mother's husband to adopt the parties' child, a trial court did not err in finding that the father's consent was not necessary under subdivision (a)(2) of this section because, by the father's own testimony, he had not seen his child in over two years; he made no child support payments after being released from prison until he received the adoption petition. *Courtney v. Ward*, 2012 Ark. App. 148, — S.W.3d — (2012).

Unreasonable Withholding of Consent.

Evidence did not support a finding that the Arkansas Department of Human Services (DHS) unreasonably withheld its consent to appellants' adoption of a child under subdivision (a)(8) of this section; appellants' adult son lived in their home and an uncle lived in substandard housing on the property without DHS's knowledge while appellants were foster parents. *Lewis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 347, — S.W.3d — (2012).

9-9-214. Appearance — Continuance — Disposition of petition.**CASE NOTES****Best Interest of the Child.**

Trial court did not err under subsection (c) of this section in denying a stepmother's adoption petition because the adoption would not be conducive to fostering a relationship between the child and the child's deceased mother's family; the loss of that relationship would not be in the child's best interest. *Pippinger v. Benson*, 2011 Ark. App. 442, — S.W.3d — (2011).

Trial court did not err under subsection (d) of this section in dismissing appellants' petition for adoption of a child for whom they had been foster parents because their adult son lived in their home and an uncle lived in substandard housing on the property without the knowledge of the Arkansas Department of Human Services. *Lewis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 347, — S.W.3d — (2012).

9-9-216. Appeal from and validation of adoption decree.**CASE NOTES****ANALYSIS****Fraud.**

Limitation of Actions.

Fraud.

Where a mother of minor children alleged that she consented to adoption of her children by her former husband's second wife due to fraud, duress, and intimidation, the trial court had jurisdiction to hear her petition to set aside the interlocutory adoption decree pursuant to this section; the 90-day limitation in Ark. R. Civ. P. 60 was inapplicable based on the

finding of fraud. *Smith v. Smith*, 2012 Ark. App. 6, — S.W.3d — (2012).

Limitation of Actions.

Trial court did not err in finding that a mother's petition to set aside the interlocutory adoption decree with respect to her minor children was not barred by the one-year limitation period in this section, as the action was commenced within that time period; once the action was commenced, the limitation period was tolled. *Smith v. Smith*, 2012 Ark. App. 6, — S.W.3d — (2012).

9-9-220. Relinquishment and termination of parent and child relationship.**CASE NOTES****Custody.**

Trial court did not err in terminating a father's parental rights to his child after his wife gave the baby up for adoption because the father did not have custody within the meaning of subdivision (c)(3) of

this section, due to his frequently living with his parents rather than his wife and his failure to support or even see the baby. *D.L.R. v. N.K.*, 2012 Ark. App. 316, — S.W.3d — (2012).

CHAPTER 10**PATERNITY****SUBCHAPTER 1 — GENERAL PROVISIONS****9-10-104. Suit to determine paternity of child born outside of marriage.****CASE NOTES****Defenses.**

Adult child's complaint against her alleged father's estate to establish paternity under this section was barred by res judicata based on her mother's bastardy action brought under former § 34-702 in

1980, although the child did not seek child support, and the prior action was dismissed for the mother's failure to appear at a hearing. *Mathis v. Estate of McSpadden*, 2012 Ark. App. 599, — S.W.3d —, 2012 Ark. App. LEXIS 706 (Oct. 24, 2012).

9-10-108. Paternity test.**CASE NOTES****Genetic Testing.**

Motion seeking genetic testing under subdivision (a)(1) of this section was properly denied because there was a signed and filed acknowledgement of paternity, which had not been rescinded. The legal

father had no need to establish paternity, and the testing requirements under subdivision (a)(1) were not applicable. *Madison v. Osburn*, 2012 Ark. App. 212, — S.W.3d — (2012).

9-10-114. Visitation rights of father.**CASE NOTES****Conditional Visitation.**

Trial court did not err by conditioning visitation upon the payment of back child support because there was little financial support provided, and visitation with a child was sporadic. There was nothing

preventing the father from establishing a relationship with the child and petitioning for a modification later. *Madison v. Osburn*, 2012 Ark. App. 212, — S.W.3d — (2012).

9-10-115. Modification of orders or judgments.**CASE NOTES****ANALYSIS****Paternity Testing.**

Rescission of Acknowledgement.

Paternity Testing.

Where a default judgment was entered in paternity proceedings and the adjudicated father's support obligation was established in 1995, where the Office of Child Support Enforcement (OCSE) instituted proceedings in 2005 to recover support arrearages, and where the adjudicated father requested a paternity test, the circuit court erred in granting the father's motion because the father's motion was untimely in that subdivision (e)(1)(A) of this section allowed an adjudicated father one paternity test during any time period in which he was required to pay child support and the father's child support obligation terminated under § 9-14-237 when the child reached the age of majority. *State v. Perry*, 2012 Ark. 106, — S.W.3d — (2012).

Subdivision (e)(1)(A) of this section provides that an adjudicated father is entitled to one paternity test at any time

during the period of time that he is required to pay child support, and the period of time in which a non-custodial parent is obligated to pay child support automatically terminates upon the child's 18th birthday pursuant to § 9-14-237(a)(1)(A)(i). Thus, the period that a father is required to pay child support ends when the child turns 18; likewise, the period of time in which the father can seek a paternity test also ends when the child turns 18. *State v. Perry*, 2012 Ark. 106, — S.W.3d — (2012).

Rescission of Acknowledgement.

Rescission of an acknowledgement of paternity was not permissible because there was no showing of fraud or material mistake of fact; no fraud was perpetrated because the mother signed the acknowledgement even knowing that the person named was not the father. There was no mistake of fact either because the parties signed the acknowledgement knowing that the person named was either not the father or there was a chance he was not the father. *Madison v. Osburn*, 2012 Ark. App. 212, — S.W.3d — (2012).

9-10-120. Effect of acknowledgment of paternity.**CASE NOTES****Rescission.**

Rescission of an acknowledgement of paternity was not permissible because there was no showing of fraud or material mistake of fact; no fraud was perpetrated because the mother signed the acknowledgement even knowing that the person

named was not the father. There was no mistake of fact either because the parties signed the acknowledgement knowing that the person named was either not the father or there was a chance he was not the father. *Madison v. Osburn*, 2012 Ark. App. 212, — S.W.3d — (2012).

CHAPTER 12**DIVORCE AND ANNULMENT****SUBCHAPTER 3 — ACTIONS FOR DIVORCE OR ALIMONY****9-12-301. Grounds for divorce.****CASE NOTES****Indignities.**

Trial court erred in granting a divorce to a wife on grounds of general indignities under subdivision (b)(3)(C) of this section because the wife's basis for seeking a divorce on that ground was the husband's affair with another woman, and adultery was a separate ground for divorce under subdivision (b)(4), but the wife never pled the ground of adultery; even if an adulterous affair could fall under the category of general indignities, the wife offered no

corroboration of the affair. *Coker v. Coker*, 2011 Ark. App. 752, — S.W.3d — (2011).

Circuit court did not err by awarding the wife a divorce based on the ground of indignities under subdivision (b)(3)(C) of this section, because the wife offered evidence of her husband's ongoing affair, rudeness, unmerited reproach, and studied neglect that amounted to "settled hate" rendering her condition in life intolerable. *Coker v. Coker*, 2012 Ark. 383, — S.W.3d — (2012).

9-12-306. Corroboration.**CASE NOTES****Contested Cases.**

Circuit court did not err by awarding the wife a divorce based on the ground of indignities under § 9-12-301(b)(3)(C), because the wife offered evidence of her husband's ongoing affair, rudeness, unmerited reproach, and studied neglect that amounted to "settled hate" rendering her condition in life intolerable. Evidence of his indignities was corroborated under

this section by her mother who indicated that her husband was rude, inattentive, and did not care about her; additionally, his misuse of marital funds, purchase of diamonds, and hotel bills provided some inference that he was engaged in studied neglect, open insult, and alienation and estrangement. *Coker v. Coker*, 2012 Ark. 383, — S.W.3d — (2012).

9-12-309. Maintenance and attorney's fees — Interest.**CASE NOTES****ANALYSIS**

Attorney's Fees.
Showing of Merit.

Attorney's Fees.

Where the wife was granted a divorce based on indignities, the circuit court abused its discretion by awarding her \$11,376.12 in attorney's fees under this section because she did not file an affidavit for attorney's fees, she failed to mention the requested expenses in the decree,

and the amount awarded was in excess of the amount sought. *Coker v. Coker*, 2012 Ark. 383, — S.W.3d — (2012).

Showing of Merit.

Trial court did not err under subdivision (a)(2) of this section in awarding attorney fees to a wife in a divorce action because the husband stood in a greater financial position than the wife. *Delgado v. Delgado*, 2012 Ark. App. 100, — S.W.3d — (2012).

9-12-312. Alimony — Child support — Bond — Method of payment.**CASE NOTES****ANALYSIS**

Alimony.
Child Support.
Compliance.

Alimony.

Nothing in subdivision (a)(1) of this section or applicable case law requires a spouse to attempt to obtain public housing before a trial court may award alimony. *Stuart v. Stuart*, 2012 Ark. App. 458, — S.W.3d — (2012).

In a divorce decree, the trial court did not abuse its discretion in awarding \$642 per month to the wife in permanent alimony under subdivision (a)(1) of this section. The trial court considered the appropriate factors and observed that while the husband's income was \$2440 per month, the wife's income was \$440 per month; the court also noted that the wife did not work outside the home during the nineteen-year marriage. *Stuart v. Stuart*, 2012 Ark. App. 458, — S.W.3d — (2012).

Child Support.

Because the trial court failed to include Social Security disability payments paid on the child's behalf as income, and failed to reference the support chart, as required by subdivision (a)(2) of this section, the child support award was remand for reconsideration. *Szabo v. Womack*, 2011 Ark. App. 664, — S.W.3d — (2011).

Compliance.

Trial court was permitted to modify a divorce decree beyond the expiration of ninety days because Ark. R. Civ. P. 60 was not applicable as the second order merely corrected an oversight in the divorce decree and clarified: (1) the date alimony previously awarded under subdivision (a)(1) of this section would begin; (2) that the Social Security Administration would withhold the payments from the husband's social security disability payments; and (3) that alimony payments would continue until remarriage or an appellate ruling. *Stuart v. Stuart*, 2012 Ark. App. 458, — S.W.3d — (2012).

9-12-313. Enforcement of separation agreements and decrees of court.

CASE NOTES

ANALYSIS

Agreements Between Parties.
Jurisdiction.

Agreements Between Parties.

In a divorce case, the court erred by ordering the husband to pay a lump sum in monthly installments because it resulted in an impermissible modification of the parties' property settlement agreement; the fact that the husband entered into an agreement that later appeared improvident was no ground for relief.

Tiner v. Tiner, 2012 Ark. App. 483, — S.W.3d — (2012).

Jurisdiction.

Pursuant to parties' property-settlement agreement, which was incorporated into their divorce decree, as the husband agreed to retire the debts of the parties' businesses, a court had authority to simply enforce its own decree along with the performance of the written agreement pursuant to this section. French v. French, 2011 Ark. App. 612, — S.W.3d — (2011).

9-12-314. Modification of allowance for alimony and maintenance — Child support.

CASE NOTES

Failure to Modify.

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under § 9-14-233 and to attorney fees was barred by res judicata, and res judicata

also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under this section and 9-14-234. Williams v. Nesbitt, 2012 Ark. App. 408, — S.W.3d — (2012).

9-12-315. Division of property.

CASE NOTES

ANALYSIS

Construction.
Adequacy of Division.
Marital Property.
Standard of Review.
Unequal Division.

Construction.

Court did not abuse its discretion in refusing to reopen the record or in denying the motion for new trial, because while subdivision (a)(1) of this section required that property be valued at the time of the divorce, it did not require the trial court to reopen the record or set aside a decree and hold an additional hearing for the purpose of receiving the most up-to-date evidence.

Dew v. Dew, 2012 Ark. App. 122, — S.W.3d — (2012).

Adequacy of Division.

Trial court did not clearly err in failing to make an unequal division of the equity in the divorcing parties' house due to a home equity loan that was received almost a year before the parties separated pursuant to this section, as the wife provided testimony that the money had already been spent and that she used it for extra nursing school expenses, her own medical expenses, and various living expenses. Grantham v. Lucas, 2011 Ark. App. 491, — S.W.3d — (2011), review denied, — S.W.3d —, 2012 Ark. LEXIS 27 (Ark. Jan. 19, 2012).

Marital Property.

Trial court erred in a divorce action in finding that a wife's stock interest in a family company was nonmarital property because the stock was marital property under subsection (b) of this section; the wife received the stock during the marriage. The stock was not acquired in exchange for nonmarital property or income; instead, it was exchanged for a note receivable. *Kelly v. Kelly*, 2011 Ark. 259, — S.W.3d — (2011).

While a husband was assessed the bulk of the parties' marital debt, pursuant to subdivision (a)(1) of this section, reversal was necessary as his continued receipt of his entire military retirement benefits would result in a substantial windfall to him. *Bellamy v. Bellamy*, 2011 Ark. App. 433, — S.W.3d — (2011).

In this divorce action, the order finding that the parties' home was marital property was affirmed because while the wife might have intended to maintain the status of her separate property, she did not; the deed to the house was to the parties jointly, as husband and wife. *McClure v. Schollmier-McClure*, 2011 Ark. App. 681, — S.W.3d — (2011).

In a divorce action, the trial court did not err under subsection (a) of this section in awarding the husband the first \$90,000 from the sale of the marital home and equally dividing the remaining proceeds because the parties had received a credit of \$90,000 toward the property's purchase price when they traded a property the husband owned prior to the marriage for the marital property. *McCormick v. McCormick*, 2012 Ark. App. 318, — S.W.3d — (2012).

Division of a retirement account between the husband and wife was appropriate pursuant to subdivision (b)(1) of this section because, by using the formula that it chose, the trial court took into account that the size of the premarital contribution allowed the account to grow more than it would have otherwise been able to do. The appellate court was simply not left with a definite and firm conviction that the trial court made a mistake in dividing the retirement account and the sums that were withdrawn from that account in the manner that it did. *Atchison v. Atchison*, 2012 Ark. App. 572, — S.W.3d — (2012).

Trial court did not err in a divorce action in awarding the husband all of a \$1.6 million settlement from his FELA personal injury claim because the FELA proceeds were not marital property, as defined under subdivision (b)(6) of this section; the trial court found that the entire settlement was for a degree of permanent disability and future medical expenses. *Palmer v. Palmer*, 2012 Ark. App. 607, — S.W.3d —, 2012 Ark. App. LEXIS 729 (Oct. 31, 2012).

Court did not reach the wife's alimony challenge; on remand to find the value of certain ventures and explain reasons for the unequal division in the order, the trial court could reconsider the alimony award. *Farrell v. Farrell*, 2013 Ark. App. 23, — S.W.3d —, 2013 Ark. App. LEXIS 33 (Jan. 23, 2013).

Subdivision (a)(4) of this section provided that a trial court had to determine the fair market value of securities if the trial court awarded money or other property in lieu of a division of stocks, bonds, and other securities, and although the value of the businesses was within the range provided by expert testimony, the statute required the trial court to expressly find the value of this type of property, and it was necessary to remand this question for such a finding. *Farrell v. Farrell*, 2013 Ark. App. 23, — S.W.3d —, 2013 Ark. App. LEXIS 33 (Jan. 23, 2013).

Standard of Review.

Overall distribution of the parties' property in the divorce proceeding was not clearly erroneous, because the wife erroneously included the children's money and the 2008 tax overpayment in her list of assets purportedly awarded to the husband, the wife did not account for the businesses' liabilities, and the testimony and exhibits introduced by the husband more than adequately demonstrated that the court equally distributed the marital estate. *Dew v. Dew*, 2012 Ark. App. 122, — S.W.3d — (2012).

Unequal Division.

Trial court did not clearly err under this section by making an unequal division and allowing a wife to keep all of her retirement benefits in the parties' divorce action, as such was an equitable distribution because during their 10-year marriage, the husband had purposely worked

below his full earning capacity and remained purposely, chronically underemployed. *Grantham v. Lucas*, 2011 Ark. App. 491, — S.W.3d — (2011), review denied, — S.W.3d —, 2012 Ark. LEXIS 27 (Ark. Jan. 19, 2012).

In a divorce proceeding, the trial court erred under subdivision (a)(1)(A) of this section in failing to award the husband any portion of the value of the wife's gift-store inventory because while the court attempted to make as close to a 50/50 distribution of the entire marital estate as possible, the distribution of business assets was uneven, depriving the husband of \$9,000. *Bamburg v. Bamburg*, 2011 Ark. App. 546, — S.W.3d — (2011).

It was necessary to remand a divorce case because the trial court failed to comply with subdivision (a)(1)(B) of this section by giving a comprehensive explanation of why it divided the parties' marital property unequally; the trial court did not address the wife's claim that the husband took marital funds for his personal use and that she should be compensated for her share. *Watkins v. Watkins*, 2012 Ark. App. 27, — S.W.3d — (2012).

In a marital dissolution action, the court erred under subdivision (a)(1)(B) of this section in not dividing the marital equity in a certificate of deposit held in the husband's name; the court did not recite any reasons in its decree as to why its decision was equitable. *Wadley v. Wadley*, 2012 Ark. App. 208, — S.W.3d — (2012).

Division of property was proper, because the court considered all of the relevant statutory factors under this section, and made specific findings concerning its reason for the unequal division of property; the husband acknowledged that the court was correct to consider the contributions of each party in deciding how to divide property. *Waggoner v. Waggoner*, 2012 Ark. App. 286, — S.W.3d — (2012).

Trial court did explain its division in the letter opinion, but the trial court did not incorporate that opinion in the decree, and thus the court had to remand this issue for the trial court to satisfy subdivision (a)(i)(B) of this section. *Farrell v. Farrell*, 2013 Ark. App. 23, — S.W.3d —, 2013 Ark. App. LEXIS 33 (Jan. 23, 2013).

CHAPTER 13

CHILD CUSTODY AND VISITATION

SUBCHAPTER 1 — GENERAL PROVISIONS

9-13-101. Award of custody.

RESEARCH REFERENCES

ALR. Construction and Application by State Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services, 25 U.S.C.S. § 1912(d). 61 A.L.R.6th 521.

Validity, Construction, and Application of Placement Preferences of State and Federal Indian Child Welfare Acts. 63 A.L.R.6th 429.

CASE NOTES

ANALYSIS

Change in Custody Warranted.
Domestic Violence.
Grandparents' Rights.
Modification.

Change in Custody Warranted.

In modifying a child custody arrangement, the trial court did not clearly err in finding that joint custody under subdivision (b)(1)(A)(ii) of this section could not continue and that it was in the best inter-

ests of the children that primary custody be awarded to the father; the parties' stipulated to changed circumstances based on their inability to communicate. In considering the children's best interests, the court noted that their son saw his parents together in an occasional relationship, then saw his dad dating other women; the parents did not present a good reality for their son. *Collier v. Collier*, 2012 Ark. App. 146, — S.W.3d — (2012).

Domestic Violence.

In denying appellant father's motion to change child custody, the trial court did not err in failing to apply the presumption in subdivisions (c)(1) and (2) of this section that it was not in the best interest of a child to remain in the custody of an abusive parent because appellee mother's poor housekeeping was not a form of domestic violence. *Loftis v. Nazario*, 2012 Ark. App. 98, — S.W.3d — (2012).

Grandparents' Rights.

The plain language of this section, read as a whole, shows an intent to allow a

grandparent to intervene, and even be awarded custody, when there is an existing custody suit; it does not allow the grandparent to create the custody dispute or initiate a custody action. Therefore, a trial court did not err by dismissing a grandfather's petition for custody of his granddaughter since there was no divorce or custody dispute in which to intervene. *Pfeifer v. Deal*, 2012 Ark. App. 190, — S.W.3d — (2012).

Modification.

Because a mother presented evidence that the father was effecting an alienation of her parental rights based on his erroneous interpretation of the visitation guidelines, the circuit court erred by failing to view the evidence in a light most favorable to the mother and by exercising its fact-finding powers. *Wagner v. Wagner*, 2011 Ark. App. 475, — S.W.3d — (2011).

Cited: *Gammill v. Hoover*, 2011 Ark. App. 788, — S.W.3d — (2011).

9-13-103. Visitation rights of grandparents when the child is in the custody of a parent.

CASE NOTES

ANALYSIS

Constitutionality.
Illustrative Cases.
Presumption Not Rebutted.

Constitutionality.

Argument that a trial court unconstitutionally applied subsections (b)-(e) of this section was not heard on appeal because it was not raised before the trial court. The trial court did not err by granting grandparents' visitation rights because they had a significant and viable relationship with a child, and there was no evidence that the grandparents would not respect the mother's parental role or that they were unable to cooperate with the mother regarding visitation. *Madison v. Osburn*, 2012 Ark. App. 212, — S.W.3d — (2012).

Illustrative Cases.

Trial court did not err under subdivision (b)(1) of this section in granting visitation to a child's maternal grandmother and great-grandmother because the actions of

the child's father were not conducive to maintaining a significant relationship with them and the loss of that relationship would likely harm the child; the child spent 90 percent of the time with them during the first year of the child's life. *Pippinger v. Benson*, 2011 Ark. App. 442, — S.W.3d — (2011).

Petition for visitation by a maternal grandmother and great-grandmother under this section was premature because, while the father had severely restricted contact between them and the child, he had not cut off visitation and, thus, they failed to prove by a preponderance of the evidence that the relationship had been, or would have been, lost. *Pippinger v. Benson (In re Adoption of J.P.)*, 2011 Ark. 535, — S.W.3d — (2011).

Order granting appellees visitation with their grandchildren was reversed because the trial court substituted a benefit analysis for the required statutory presumption in favor of the parent's decision and in so doing, the trial court basically

required appellant to prove that visitation would be harmful, losing sight of the fact that it was the parent who had a right to uninterrupted custody. *Bowen v. Bowen*, 2012 Ark. App. 403, — S.W.3d — (2012).

Award of grandparent visitation was improper. However, because the grandparents established regular contact with the child for at least 12 consecutive months during the child's life while his parents were still married, the grandparents proved a significant and viable relationship under subdivision (d)(1)(C) of this section even though they had not had recent regular contact with the child. *Harrison v. Phillips*, 2012 Ark. App. 474, — S.W.3d — (2012).

Award of grandparent visitation to the child's paternal grandparents was inappropriate because they failed to rebut the statutory presumption under subsection (e) of this section that the mother's denying visitation was in the child's best interest. There was a lack of evidence that the loss of the grandparents' relationship with the child was likely to harm the child and the trial court made no written findings of the factors it considered in awarding grandparent visitation. *Harrison v. Phillips*, 2012 Ark. App. 474, — S.W.3d — (2012).

Decision granting the grandmother's petition for grandparent visitation was inappropriate pursuant to subdivision (c)(1) of this section because the trial court failed to address the required element of harm that the child would suffer from a

loss of her relationship with her grandmother and there was insufficient evidence in the record to satisfy the grandmother's burden of proving that element. Thus, the trial court's finding that the grandmother had proved that visitation was in the child's best interest was clearly erroneous. *Favano v. Elliott*, 2012 Ark. App. 484, — S.W.3d — (2012).

Because the grandparents did not prove that they had been denied visitation, they failed to prove the loss in relationship necessary to satisfy this section. Further, the decision to reverse the order of grandparent visitation was equally based upon the grandparents' failure to show that they could and would cooperate with the father were visitation allowed; therefore, the trial court's finding that the grandparents were willing to cooperate with appellant if visitation was allowed was clearly erroneous. *Harvill v. Bridges*, 2012 Ark. App. 683, — S.W.3d —, 2012 Ark. App. LEXIS 805 (Dec. 5, 2012).

Presumption Not Rebutted.

Circuit court erred by awarding grandparent visitation; because the grandmother's visitation had been limited by the child's father but not altogether denied, she failed to prove the loss in relationship necessary to overcome the presumptive weight given to the parent's decision of whether grandparent visitation was in the best interest of the child under subdivision (c)(1) of this section. *Morris v. Dickerson*, 2012 Ark. App. 129, — S.W.3d — (2012).

CHAPTER 14

SPOUSAL AND CHILD SUPPORT

SUBCHAPTER 1 — GENERAL PROVISIONS

9-14-107. Change in payor income warranting modification.

CASE NOTES

Deviation from Chart.

While there was no evidence that a father willfully failed to follow the trial court's child support orders, the record contained no specific written findings about the presumptive amount under the

guidelines based upon the father's income or why the presumptive amount was unjust or inappropriate under subsection (c) of this section. *Stevenson v. Stevenson*, 2011 Ark. App. 552, — S.W.3d — (2011).

SUBCHAPTER 2 — ENFORCEMENT GENERALLY**9-14-233. Arrearages — Interest and attorney's fees — Work activities and incarceration.****CASE NOTES****Judgment Interest.**

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under this section and to attorney fees was barred by res judicata, and res judicata

also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under §§ 9-12-314 and 9-14-234. *Williams v. Nesbitt*, 2012 Ark. App. 408, — S.W.3d — (2012).

9-14-234. Arrearages — Finality of judgment.**CASE NOTES****Modification.**

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under § 9-14-233 and to attorney fees was barred by res judicata, and res judicata

also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under § 9-12-314 and this section. *Williams v. Nesbitt*, 2012 Ark. App. 408, — S.W.3d — (2012).

9-14-237. Expiration of child support obligation.**CASE NOTES****Termination of Support.**

Section 9-14-115(e)(1)(A) provides that an adjudicated father is entitled to one paternity test at any time during the period of time that he is required to pay child support, and the period of time in which a non-custodial parent is obligated to pay child support automatically terminates upon the child's 18th birthday pursuant to subdivision (a)(1)(A)(i) of this section. Thus, the period that a father is required to pay child support ends when the child turns 18; likewise, the period of time in which the father can seek a paternity test also ends when the child turns 18. *State v. Perry*, 2012 Ark. 106, — S.W.3d — (2012).

Where a default judgment was entered

in paternity proceedings and the adjudicated father's support obligation was established in 1995, where the Office of Child Support Enforcement (OCSE) instituted proceedings in 2005 to recover support arrearages, and where the adjudicated father requested a paternity test, the circuit court erred in granting the father's motion because the father's motion was untimely in that § 9-10-115(e)(1)(A) allowed an adjudicated father one paternity test during any time period in which he was required to pay child support and the father's child support obligation terminated under this section when the child reached the age of majority. *State v. Perry*, 2012 Ark. 106, — S.W.3d — (2012).

CHAPTER 15

DOMESTIC ABUSE ACT

SUBCHAPTER 2 — JUDICIAL PROCEEDINGS

9-15-201. Petition — Requirements generally.

CASE NOTES

Evidence.

Although an ex-wife's petition for an order of protection properly alleged domestic abuse, pursuant to subdivision (e)(1)(A) of this section, there was insufficient evidence to support the trial court's grant of the order because the ex-husband's constant phone calls and harassing

emails did not fall under the legislative definition of domestic abuse; there was no evidence the ex-husband's comment of "or else" was in fact some sort of threat of physical or bodily harm. *Paschal v. Paschal*, 2011 Ark. App. 515, — S.W.3d — (2011).

9-15-204. Hearing — Service.

CASE NOTES

Notice.

Because a protective order hearing was a special proceeding under Ark. R. Civ. P. 81, the notice procedures in subdivision (b)(1)(A) of this section, and not Ark. R. Civ. P. 6(c), applied; therefore, because a respondent was timely served six days before the protective order hearing, the respondent's motion to set aside an order of protection was properly dismissed. *Wills v. Lacefield*, 2011 Ark. 262, — S.W.3d — (2011).

In a case where appellant contended that an order of protection did not comport with the requirements of the law because it was issued after a hearing without appellant receiving actual notice or an opportunity to participate therein, the re-

vocation of probation based on the commission of a felony was appropriate because appellant violated the protective order under § 5-53-134; by pleading guilty, appellant admitted that he knew the order existed, an element of the crime, and that he knowingly violated it. Appellant did not seek to appeal the order of protection, he did not raise a lack of notice before entering his guilty plea, and he did not appeal the judgment following the plea in that case; moreover, the circuit court had jurisdiction over any criminal act within its borders, and appellant admitted to committing the criminal act of violating the protective order. *Standridge v. State*, 2012 Ark. App. 563, — S.W.3d — (2012).

CHAPTER 17

UNIFORM INTERSTATE FAMILY SUPPORT ACT

ARTICLE 5

DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

9-17-501. Employer's receipt of income-withholding order of another state.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under this section, and the applicable

statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. *Schultz v. Butterball*, 2012 Ark. 163, — S.W.3d — (2012).

9-17-502. Employer's compliance with income-withholding order of another state.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable

statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. *Schultz v. Butterball*, 2012 Ark. 163, — S.W.3d — (2012).

9-17-505. Penalties for noncompliance.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable

statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. *Schultz v. Butterball*, 2012 Ark. 163, — S.W.3d — (2012).

9-17-506. Contest by obligor.

CASE NOTES

Statutory Scheme.

There was no merit to the argument that the income-withholding statutory

scheme violated Ark. Const. Art. 2, § 13, because subsection (a) of this section allowed the employee a way to seek redress

in the event the support order was defective. *Schultz v. Butterball*, 2012 Ark. 163, — S.W.3d — (2012).

9-17-507. Administrative enforcement of orders.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable statutory scheme required the employer to comply with the withholding order and

by doing so, it could not be held civilly liable; the registration requirement of subsection (a) of this section was triggered only if a party sought the assistance of a support-enforcement agency in the state and the obligor contested the validity of the order. *Schultz v. Butterball*, 2012 Ark. 163, — S.W.3d — (2012).

ARTICLE 6

ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

PART 1 — REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

9-17-602. Procedure to register order for enforcement.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable

statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. *Schultz v. Butterball*, 2012 Ark. 163, — S.W.3d — (2012).

CHAPTER 18

QUALIFIED DOMESTIC RELATIONS ORDERS

9-18-101. Definitions.

CASE NOTES

Appellate Review.

Circuit court clearly erred by entering a judgment against a former husband for \$115,936.81 to the benefit of his former wife after her separate account lost value

between the time a qualified domestic relations was entered and when she elected distribution. *Duncan v. Duncan*, 2011 Ark. 348, — S.W.3d — (2011).

9-18-102. Orders to reach retirement benefits.**CASE NOTES****Appellate Review.**

Circuit court clearly erred by entering a judgment against a former husband for \$115,936.81 to the benefit of his former wife after her separate account lost value

between the time a qualified domestic relations was entered and when she elected distribution. *Duncan v. Duncan*, 2011 Ark. 348, — S.W.3d — (2011).

CHAPTER 19**UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT****SUBCHAPTER 1 — GENERAL PROVISIONS****9-19-102. Definitions.****RESEARCH REFERENCES**

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision. 57 A.L.R.6th 163.

9-19-104. Application to Indian tribes.**RESEARCH REFERENCES**

ALR. Construction and Application by State Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services, 25 U.S.C.S. § 1912(d). 61 A.L.R.6th 521.

Validity, Construction, and Application of Placement Preferences of State and Federal Indian Child Welfare Acts. 63 A.L.R.6th 429.

9-19-105. Internal application of chapter.**RESEARCH REFERENCES**

ALR. Applicability and Application of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to International Child Custody and Support Actions. 66 A.L.R.6th 269.

SUBCHAPTER 2 — JURISDICTION**9-19-201. Initial child-custody jurisdiction.****RESEARCH REFERENCES**

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision. 57 A.L.R.6th 163.

Construction and Application of Uniform Child Custody Jurisdiction and En-

forcement Act's Exclusive, Continuing Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59 A.L.R.6th 161.

Construction and Application of Uni-

form Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — Other Than No Significant Connection/Substantial Evidence. 60 A.L.R.6th 193.

9-19-202. Exclusive, continuing jurisdiction.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59 A.L.R.6th 161.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — Other Than No Significant Connection/Substantial Evidence. 60 A.L.R.6th 193.

9-19-203. Jurisdiction to modify determination.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing

Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59 A.L.R.6th 161.

9-19-206. Simultaneous proceedings.

CASE NOTES

In General.

Arkansas county circuit court did not err in declining to exercise jurisdiction over a child custody matter because California was a more appropriate forum under § 9-19-207(b) as a previous child cus-

tody determination was made there and allegations were made that the child had been removed to California to prevent abuse by appellant mother. Casas-Cordero v. Mira, 2012 Ark. App. 457, — S.W.3d — (2012).

9-19-207. Inconvenient forum.

CASE NOTES

In General.

Arkansas county circuit court did not err in declining to exercise jurisdiction over a child custody matter because California was a more appropriate forum under subsection (b) of this section as a

previous child custody determination was made there and allegations were made that the child had been removed to California to prevent abuse by appellant mother. Casas-Cordero v. Mira, 2012 Ark. App. 457, — S.W.3d — (2012).

9-19-208. Jurisdiction declined by reason of conduct.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and

Enforcement Act's Home State Jurisdiction Provision. 57 A.L.R.6th 163.

SUBCHAPTER 3 — ENFORCEMENT**9-19-305. Registration of child-custody determination.****CASE NOTES****Application.**

In a divorce case, a trial court erred by awarding a former wife her travel expenses because they were not authorized by Ark. R. Civ. P. 54(d); moreover, subsec-

tion (c) of this section had no application as it concerned the registration of child-custody determinations. *Clowers v. Stickel*, — Ark. App. —, — S.W.3d —, 2012 Ark. App. LEXIS 466 (May 16, 2012).

SUBTITLE 3. MINORS**CHAPTER 25****GENERAL PROVISIONS****9-25-101. Age of majority — Exceptions.****CASE NOTES****Consensual Sexual Relations.**

Section 5-14-125(a)(6), as applied to a high school teacher who engaged in a consensual sexual relationship with an 18-year-old student, who was an adult under subsection (a) of this section, in-

fringed on the teacher's fundamental right to privacy and was not the least restrictive method available for the promotion of the state's interest; therefore, it was unconstitutional. *Paschal v. State*, 2012 Ark. 127, — S.W.3d — (2012).

CHAPTER 27**JUVENILE COURTS AND PROCEEDINGS****SUBCHAPTER 3 — ARKANSAS JUVENILE CODE****9-27-302. Purposes — Construction.****CASE NOTES****ANALYSIS****Purpose.**

Best Interests.

Purpose.

Arkansas Department of Human Services (DHS) was not entitled to certiorari relief in a dependency-neglect proceeding because the circuit court was within its jurisdiction under subdivision (1) of this section to act to protect the integrity of the proceeding and to safeguard the rights of the litigants before it when it ordered

DHS to correct problems that were preventing work and services. *Ark. Dep't of Human Servs. v. Shelby*, 2012 Ark. 54, — S.W.3d — (2012).

Best Interests.

Trial court erred under subdivisions (1) and (2)(A) of this section in awarding permanent custody to maternal grandparents on the ground that it was in the children's best interest; while the children's father had some issues to resolve, since the case was commenced, a mere six months before the trial court awarded the

grandparents custody, he had no positive drug tests, maintained employment, and was living in an approved housing situa-

tion with his parents. *Chase v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 311, — S.W.3d — (2012).

9-27-303. Definitions.

CASE NOTES

ANALYSIS

Appeal.
Dependent-Neglect Adjudication.
Dependent-Neglected Juvenile.
Jurisdiction.
Neglect.

Appeal.

Trial court did not err in terminating the mother's parental rights because there was sufficient evidence to support a finding that termination was in the child's best interest, and the Arkansas Department of Human Services had proved that the mother had abandoned the child and had subjected him to aggravated circumstances under§ 9-27-341(b)(3)(B)(ix)(a)(3)(B) and subdivision (1) of this section. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. *Fant v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 428, — S.W.3d — (2012).

Dependent-Neglect Adjudication.

Trial court did not err under subdivision (18)(A) of this section in adjudicating a mother's daughter dependent-neglected on the ground that the daughter was at substantial risk of future sexual abuse by her six-year-old brother because the mother had missed her psychological-evaluation appointment and resisted efforts to remedy household instability and neglect. *Weatherspoon v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 34, — S.W.3d — (2012).

Sufficient evidence supported the trial court's determination that appellant's children were dependent-neglected based on an allegation of abuse by choking under subdivision (3)(A) of this section, because appellant's daughter testified that her father held her down on a bed, placed his hands around her neck, and choked her; she was not able to breathe. Her brother confirmed that the choking took place and his father ordered him to re-

strain her legs during the incident; a family-service worker also testified that appellant admitted to her that the incident occurred. *Lynch v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 149, — S.W.3d — (2012).

The order adjudicating appellant's daughter dependent-neglected was affirmed because the daughter had been involved in a fight with a male and had suffered a head injury, which required medical attention, and the daughter showed up at a hearing in juvenile court without a parent or guardian present. *Lowe v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 155, — S.W.3d — (2012).

Finding that the adopted daughter was dependent-neglected as a result of sexual abuse by the father was not clearly erroneous, because the daughter testified that her father first touched her inappropriately when she was eleven years old, the daughter testified that the abuse hurt and that she would try to pull away, and the court expressly found the testimonies of the daughter and the certified sexual-assault examiner to be both credible and consistent with each other. *Wells v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 176, — S.W.3d — (2012).

Court erred in adjudicating the children as dependent-neglected, because the Arkansas Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. *Johnson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 244, — S.W.3d — (2012).

Order in which the child was adjudicated dependent-neglected was affirmed because there was a true prior finding by investigators that appellant and the paternal grandfather subjected the child to extreme and repeated cruelty; appellant and the paternal grandfather would re-

cord inappropriate interviews with the child that were emotionally traumatizing. *Stoliker v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 415, — S.W.3d — (2012).

Trial court did not err under subdivision (18)(A) of this section in adjudicating a mother's infant son dependent-neglected because the trial court was faced with the uncontested prior finding that one of the infant's siblings had been physically abused while under the age of one, even though the offender was unknown. *Eason v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 507, — S.W.3d — (2012).

Evidence was sufficient to support the trial court's decision adjudicating appellant's children dependent-neglected under subdivisions (18)(A)(v)-(vi) of this section, because they were in her care the day she was arrested for possession of drug paraphernalia and tested positive for methamphetamine. Appellant's conduct constituted neglect and placed the children at risk of substantial harm. *Gaer v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 516, — S.W.3d — (2012).

Dependent-Neglected Juvenile.

Trial court did not err in adjudicating parents' children dependent-neglected under subdivision (18)(A) of this section because injuries to their infant had to be the result of a high-force trauma, and a caregiver would have had to know the infant suffered the trauma; yet no one sought medical care for the infant immediately after whatever event caused the injuries, which consisted of multiple rib fractures, a skull fracture, bruises, and retinal hemorrhaging. *Churchill v. Ark. HHS*, 2012 Ark. App. 530, — S.W.3d — (2012).

Jurisdiction.

Circuit court had jurisdiction to hear the case even though it concerned child-

custody law and was outside the subject of proceedings in the juvenile division, because the designation of divisions was for the purpose of judicial administration and not for the purpose of subject matter jurisdiction, and the creation of divisions would in no way limit the powers and duties of the judges to hear all matters within the jurisdiction of the circuit court; once the juvenile division of the circuit court ordered that the child be placed in the permanent custody of the third parties, the child was no longer dependent-neglected and she came into dependency-neglect proceedings due to parental neglect and parental unfitness. *Young v. Ark. Dep't of Human Servs.*, 2012 Ark. 334, — S.W.3d — (2012).

Neglect.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. *Ark. Dep't of Human Servs. v. A.M.*, 2012 Ark. App. 240, — S.W.3d — (2012).

Cited: *Bayron v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 75, — S.W.3d — (2012).

9-27-306. Jurisdiction.

CASE NOTES

Exclusive Jurisdiction.

Arkansas Department of Human Services (DHS) was not entitled to certiorari relief in a dependency-neglect proceeding because the circuit court was within its exclusive jurisdiction to act to protect the

integrity of the proceeding and to safeguard the rights of the litigants before it when it ordered DHS to correct problems that were preventing work and services. *Ark. Dep't of Human Servs. v. Shelby*, 2012 Ark. 54, — S.W.3d — (2012).

9-27-309. Confidentiality of records.

CASE NOTES

Cited: C.L. v. State, 2012 Ark. App. 374, — S.W.3d — (2012).

9-27-311. Required contents of petition.

CASE NOTES

Insufficient Evidence.

Court erred in adjudicating the children as dependent-neglected, because the Arkansas Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in

other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. Johnson v. Ark. Dep't of Human Servs., 2012 Ark. App. 244, — S.W.3d — (2012).

9-27-313. Taking into custody.

CASE NOTES

Removal.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent

her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

9-27-316. Right to counsel.

CASE NOTES

Cited: B.H.1 v. Ark. HHS, 2012 Ark. App. 532, — S.W.3d — (2012).

9-27-318. Filing and transfer to the criminal division of circuit court.

CASE NOTES

ANALYSIS

Constitutionality.

Extended Juvenile Jurisdiction Hearing.
Factors Considered.
Jurisdiction.

Procedure.
Transfer Denied.

Constitutionality.

This section, which vested prosecutors with the discretion to bring felony charges against 16-year-olds in the criminal divisions of circuit courts, was substantive law and not a rule of pleading, practice, and procedure; therefore, it did not violate separation of powers under Ark. Const. Art. 4, §§ 1, 2. Also, subsection (c) of this section did not deny a juvenile equal protection of the law because treatment as a juvenile was not an inherent right and could be modified by the legislature. *C.B. v. State*, 2012 Ark. 220, — S.W.3d — (2012).

Extended Juvenile Jurisdiction Hearing.

Designation of the juvenile for extended juvenile jurisdiction (EJJ) was proper because his contention that the law-of-the-case doctrine barred the juvenile court from conducting an extended juvenile jurisdiction hearing and granting the state's motion for such a designation was rejected. In the criminal case, that court reached no decision and provided no direction to the criminal court with respect to EJJ designation and upon remand the criminal court made no decision regarding EJJ designation; nothing required the criminal court to make a decision on the EJJ issues before the case was transferred to juvenile court. *N.D. v. State*, 2012 Ark. 265, — S.W.3d — (2012).

Factors Considered.

Circuit court did not err in denying a juvenile's motion to transfer to the juvenile division under the factors in subsection (g) of this section. The juvenile had an extensive record, and he brutally ambushed and murdered a guard before escaping from a juvenile facility and carjacking a vehicle. *C.B. v. State*, 2012 Ark. 220, — S.W.3d — (2012).

Jurisdiction.

Inmate was not entitled to habeas corpus relief because a trial court did not lack jurisdiction over a rape case; pursuant to subdivision (c)(1) of this section, the inmate could have been tried in an adult court because he was over the age of 16. *Ashby v. State*, 2012 Ark. 48, — S.W.3d — (2012).

Procedure.

In a hearing on motions to transfer a case to juvenile court under this section, to dismiss the case, and to declare the transfer statute unconstitutional, the circuit court abused its discretion by not excluding the testimony of two key witnesses because the state blatantly violated Ark. R. Crim. P. 17.1(a) by refusing to offer these witnesses' names until late in the afternoon before the hearing and, as a result, the defense did not have time to interview the two witnesses. Although the hearing was not a trial or an adjudication, the state's dilatory behavior nevertheless occurred at a pivotal point in the proceedings when the circuit court was deciding the critical issue of whether the juvenile would be tried as a juvenile or as an adult. *N.D. v. State*, 2011 Ark. 282, — S.W.3d — (2011).

Transfer Denied.

Because a juvenile twice in less than a month invited 16-year-old girls into his truck, pulled over into isolated areas, and forced himself on the victims despite their protests, sexually assaulting one and raping the other, and because understood that his conduct was wrong, and had no deficits in his family life that would excuse his conduct, pursuant to subsection (g) of this section, the juvenile's motions to transfer to juvenile court were properly denied. *Lewis v. State*, 2011 Ark. App. 691, — S.W.3d — (2011).

Trial court did not err in denying a juvenile's motion to transfer a case to juvenile court after the juvenile was charged with second-degree murder because the trial court complied with the mandate of subsection (g) of this section by considering all of the required factors and making findings for each; the victim received eight stab wounds that resulted in the victim's death. *Cole v. State*, 2012 Ark. App. 281, — S.W.3d — (2012).

Trial court committed no error in denying the juvenile's motion to transfer the case to juvenile court, because the trial court considered each of the statutory factors under subsection (g) of this section, and made written findings; the evidence demonstrated that the juvenile had been offered the services of the juvenile system as a result of his commission of previous offenses, but rather than comply with the juvenile court's rules he persisted

in delinquent behavior, and the present allegations (four counts of aggravated robbery, four counts of theft of property, one count of theft by receiving, and one count of aggravated assault) involved serious, violent and premeditated conduct that raised legitimate concerns relating to the protection of society. *D.D.R. v. State*, 2012 Ark. App. 329, — S.W.3d — (2012).

Denial of a request to transfer a first-degree murder and terrorist acts case to juvenile court under subsection (g) of this section was proper because a juvenile had

not taken advantage of opportunities given to her, she was charged with very serious offenses, she was involved in the planning of the offenses, and she was involved in gang activity. Because the transfer was denied, any arguments relating to extended-juvenile-jurisdiction were not applicable. *M.R.W. v. State*, 2012 Ark. App. 591, — S.W.3d —, 2012 Ark. App. LEXIS 707 (Oct. 24, 2012).

Cited: *C.L. v. State*, 2012 Ark. App. 374, — S.W.3d — (2012).

9-27-325. Hearings — Generally.

CASE NOTES

ANALYSIS

Burden of Proof.
Evidence.

Burden of Proof.

Court erred in adjudicating the children as dependent-neglected, because the Arkansas Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. *Johnson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 244, — S.W.3d — (2012).

Preponderance of the evidence supported the trial court's decision adjudicating appellant's children dependent-neglected under § 9-27-303(18)(A)(v)-(vi) and subdivision (h)(2)(B) of this section because they were in her care the day she was arrested for possession of drug paraphernalia and tested positive for methamphetamine. Appellant's conduct placed the children at risk of substantial harm. *Gaer v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 516, — S.W.3d — (2012).

Evidence.

Sufficient evidence for purposes of subdivision (h)(2)(B) of this section supported the trial court's determination that appellant's children were dependent-neglected based on an allegation of abuse by choking, because appellant's daughter testified that her father held her down on a bed,

placed his hands around her neck, and choked her; she was not able to breathe. Her brother confirmed that the choking took place and his father ordered him to restrain her legs during the incident; a family-service worker also testified that appellant admitted to her that the incident occurred. *Lynch v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 149, — S.W.3d — (2012).

The order adjudicating appellant's daughter dependent-neglected was affirmed because the daughter had been involved in a fight with a male and had suffered a head injury, which required medical attention, and the daughter showed up at a hearing in juvenile court without a parent or guardian present. *Lowe v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 155, — S.W.3d — (2012).

Finding that the adopted daughter was dependent-neglected as a result of sexual abuse by the father was not clearly erroneous, because the daughter testified that her father first touched her inappropriately when she was eleven years old, the daughter testified that the abuse hurt and that she would try to pull away, and the court expressly found the testimonies of the daughter and the certified sexual-assault examiner to be both credible and consistent with each other. *Wells v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 176, — S.W.3d — (2012).

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate

danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

Order in which the child was adjudicated dependent-neglected was affirmed because there was a true prior finding by investigators that appellant and the pa-

ternal grandfather subjected the child to extreme and repeated cruelty; appellant and the paternal grandfather would record inappropriate interviews with the child that were emotionally traumatizing. *Stoliker v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 415, — S.W.3d — (2012).

Trial court did not err in awarding permanent custody of appellant's child to the child's father under subdivision (h)(2)(B) of this section because although appellant had fully complied at times with the case plan and had the child returned to her custody, she was still not capable of caring for her and acting in her best interest, according to the evidence presented. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was without merit. *Harris v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 427, — S.W.3d — (2012).

9-27-327. Adjudication hearing.

CASE NOTES

ANALYSIS

Burden of Proof.
Evidence.

Burden of Proof.

Court erred in adjudicating the children as dependent-neglected, because the Arkansas Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. *Johnson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 244, — S.W.3d — (2012).

Preponderance of the evidence supported the trial court's decision adjudicating appellant's children dependent-neglected because they were in her care the day she was arrested for possession of drug paraphernalia and tested positive for methamphetamine. Because appellant's boys were in her apartment alone while she was in another apartment using drugs, the facts supported the allegation under subdivision (a)(1) of this section that appellant's conduct constituted neglect and placed her children at risk of

substantial harm. *Gaer v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 516, — S.W.3d — (2012).

Evidence.

Sufficient evidence supported the trial court's determination that appellant's children were dependent-neglected for purposes of subdivision (a)(1) of this section based on an allegation of abuse by choking, because appellant's daughter testified that her father held her down on a bed, placed his hands around her neck, and choked her; she was not able to breathe. Her brother confirmed that the choking took place and his father ordered him to restrain her legs during the incident; a family-service worker also testified that appellant admitted to her that the incident occurred. *Lynch v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 149, — S.W.3d — (2012).

The order adjudicating appellant's daughter dependent-neglected was affirmed because the daughter had been involved in a fight with a male and had suffered a head injury, which required medical attention, and the daughter showed up at a hearing in juvenile court without a parent or guardian present. *Lowe v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 155, — S.W.3d — (2012).

9-27-332. Disposition — Family in need of services — Generally.

CASE NOTES

School Uniforms.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent

her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

9-27-333. Disposition — Family in need of services — Limitations.

CASE NOTES

School Uniforms.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent

her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

9-27-334. Disposition — Dependent-neglected — Generally.

CASE NOTES

Change of Custody.

Trial court did not err in awarding permanent custody of a mother's children to their respective fathers because it was in the best interest of the children; the mother's testimony revealed that neither of her teenage children attended school regu-

larly in her care. One father had obtained much-needed dental work for his twins, had seen to their other medical needs, and both had begun wearing glasses. Thomas v. Ark. Dep't of Human Servs., 2012 Ark. App. 309, — S.W.3d — (2012).

9-27-338. Permanency planning hearing.

CASE NOTES

ANALYSIS

Custody Award.
Failure to Preserve.

Custody Award.

Award of permanent custody of the children to their maternal grandmother was inappropriate because the first statutory

preference, under subdivision (c)(1) of this section, applied to the father since he was a parent of the children. The first preference of the statute was not to return the child to the parent to from whom he had been taken. *Mahone v. Ark. Dep't of Human Servs.*, 2011 Ark. 370, — S.W.3d — (2011).

Trial court erred in awarding permanent custody to maternal grandparents because while the children's father had some issues to resolve, since the case was commenced, a mere six months before the trial court awarded the grandparents custody, he had no positive drug tests, maintained employment, and was living in an approved housing situation with his parents; the father fell into the first prefer-

ence category in subsection (c) of this section while the grandparents fell into the fifth category. *Chase v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 311, — S.W.3d — (2012).

Failure to Preserve.

As parents failed to appeal prior reasonable-efforts findings regarding reunification services offered to them pursuant to this section and § 9-27-359, an appellate court was precluded from reviewing those findings for the time periods covered by the prior orders. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 522, — S.W.3d — (2011).

Cited: *Davis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 419, — S.W.3d — (2012).

9-27-341. Termination of parental rights.

RESEARCH REFERENCES

ALR. Construction and Application by State Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services, 25 U.S.C.S. § 1912(d). 61 A.L.R.6th 521.

Validity, Construction, and Application of Placement Preferences of State and Federal Indian Child Welfare Acts. 63 A.L.R.6th 429.

CASE NOTES

ANALYSIS

In General.
 Adoptability.
 Aggravated Circumstances.
 Appeal.
 Best Interest of the Juvenile.
 Continuance for Good Cause.
 Evidence.
 Failure to Preserve.
 Findings.
 Grandparents.
 Grounds.
 Imprisonment.
 Standard of Review.

In General.

Failure of a trial court to hold a termination of parental rights hearing within 90 days of the filing of the petition, as required by subsection (d) of this section, did not deprive the trial court of jurisdiction and the trial court did not err in denying the mother's motion to dismiss; the mother failed to prove prejudice by the

delay. *Hill v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 108, — S.W.3d — (2012).

Adoptability.

In a termination of parental rights case under this section, a trial court properly considered adoption evidence in determining whether termination was in the children's best interest; testimony from an adoption specialist that two children were adoptable was sufficient. A mother contended that the evidence of adoptability was not sufficient, but the adoption specialist stated that a family had already inquired about adopting the children. *Lowery v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 478, — S.W.3d — (2012).

Aggravated Circumstances.

Termination of parental rights was appropriate where juveniles were subjected to aggravated circumstances under subdivision (b)(3)(B)(ix)(a)(3)(B) of this section; a mother failed to protect her daughter from sexual abuse, and both children were

subjected to extreme and repeated cruelty. It was in the best interest of the children to terminate parental rights were adoption suitability was shown, and the children would have been subject to potential harm if returned to the home; since there was no appeal from the aggravated circumstances decision, there was no need to address the alternate ground for termination, which was based on the parents' 25 and 35-year sentences in criminal cases, which constituted substantial periods in the life of the juveniles. *Bowman v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 477, — S.W.3d — (2012).

Appeal.

Because a mother failed to preserve her claims and did not appeal the prior orders finding reasonable efforts by the Arkansas Department of Human Services, it was in the child's best interests to terminate the mother's parental rights pursuant to subdivision (b)(3) of this section. *Kelley v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 481, — S.W.3d — (2011).

Mother's appeal of an order terminating her parental rights to her child was dismissed because she failed to appeal from an earlier order terminating her parental rights based on her consent under subdivision (b)(3)(B)(v)(a) of this section. *Faas v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 666, — S.W.3d — (2011).

Termination of the mother's parental rights to her three children was affirmed because the mother did not argue that the statutory grounds supporting termination of her parental rights were not proved by clear and convincing evidence and the appellate court would not address arguments raised for the first time on appeal. *Andrews v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 22, — S.W.3d — (2012).

Best Interest of the Juvenile.

Because the children were dependent-neglected by virtue of neglect and inadequate supervision, and because neither parent had achieved a degree of stability that would permit the safe return of the children, termination of their parental rights under subdivision (b)(3) of this section was in the children's best interest. *Tucker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 430, — S.W.3d — (2011).

Termination of a father's parental rights was in the children's best interest

because the father had not demonstrated his ability to remain sober in an unstructured environment for a significant time period, and his disability benefits were inadequate to provide a home and all other necessities for his children. Although the father did make commendable progress in attaining sobriety, he did not demonstrate similar progress in achieving sufficient mental health and stability to be a parent to his children. *Jessup v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 463, — S.W.3d — (2011).

Termination of a mother's parental rights was in the children's best interest because the children had been out of the mother's care for over twelve months, and she had failed to remedy the conditions that had caused them to be removed from her custody. The mother moved in with a man with a lengthy criminal history, and she utterly failed to remedy her drug problems, having tested positive for every drug screen. *Jessup v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 463, — S.W.3d — (2011).

Clear and convincing evidence supported a trial court determination that termination of parental rights was in the best interests of the children under subdivisions (b)(3)(A) and (B) of this section, as the parents did not show that they could consistently provide the children much-needed stability. *Christian-Holderfield v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 534, — S.W.3d — (2011).

Evidence supported a trial court's determination that termination of parental rights was in a child's best interests, as the grounds for such relief under subdivision (b)(3)(B)(i)(a) of this section were met, and the court found that returning the child to his mother had the potential for unhealthy circumstances and harm. *Cariker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 574, — S.W.3d — (2011).

Termination of the mother's parental rights to her three children was affirmed because there was sufficient testimony presented on the issue of adoptability and there was evidence presented to establish potential harm to the children if returned to their mother; the mother was found to have subjected the children to aggravated circumstances due to their residence in a drug premises and her involvement in criminal activity. *Threadgill v. Ark. Dep't*

of Human Servs., 2011 Ark. App. 642, — S.W.3d — (2011).

Order terminating the father's parental rights to his daughter was reversed because there was no evidence that any harm or real risk of potential harm was introduced into the child's life by the father's slight lapses in judgment, or that her best interests would be served by having her father permanently and irrevocably removed from her life. *Rhine v. Ark. Dep't of Human Servs. & Minor Child*, 2011 Ark. App. 649, — S.W.3d — (2011).

Termination of the parental rights to appellants' three-year old son was affirmed because the court heard evidence that the seventeen-year-old father consumed alcohol in his home, as shown by the many empty bottles in his room, yet did not attend the drug-and-alcohol assessment for which he was referred. *Landis-Maynard v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 673, — S.W.3d — (2011).

It was not clearly erroneous for a trial court to find a termination of parental rights was in children's best interest, under subdivision (b)(3)(A) of this section, because (1) the mother whose parental rights were terminated waived any objection to the admissibility of testimony supporting the finding, and (2) the court expressly considered statutorily mandated factors. *Brabon v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 2, — S.W.3d — (2012).

Termination of the mother's parental rights to her son was affirmed because the circuit court's focus was appropriately on the child's best interests and the risk posed to the child in this case, should appellant's mental illnesses manifest, was not merely a risk of injury, but of death. *Rossie-Fonner v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 29, — S.W.3d — (2012).

Trial court did not err in terminating a mother's parental rights to her child on the ground that termination was in the child's best interest under subdivision (b)(3) of this section because the mother failed to accept any meaningful responsibility for the physical abuse that the child was forced to suffer at the hand of her boyfriend; she failed to demonstrate that she could protect and care for her child.

Cole v. Ark. Dep't of Human Servs., 2012 Ark. App. 203, — S.W.3d — (2012).

Under this section, terminating the father's parental rights was in the best interest of the child because the father was unable to obtain and maintain stable and appropriate housing, employment, income, and transportation; the autistic child had significant special needs; and the child had progressed well while in the foster mother's care. *Hall v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 245, — S.W.3d — (2012).

Termination of a father's parental rights was appropriate because a trial court relied upon the record in making its decision, pursuant to this section; even though the father had made some progress and had partially completed a case plan, he failed to complete drug rehabilitation or achieve sufficient stability to parent the child. The father had been given a reasonable opportunity to achieve the required goals, and there were no compelling reasons to give him more time to work on reunification; the trial court noted the child's need for permanency and found that termination was in her best interest. *Crow v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 313, — S.W.3d — (2012).

Father's parental rights were properly terminated because the Arkansas Department of Human Services presented clear and convincing evidence supporting termination under subdivisions (b)(3)(B)(ix)(a)(4), (b)(3)(B)(viii), and (b)(3)(B)(ii)(a) of this section. Further, termination was in the child's best interest as the child was "readily adoptable," and there would be a risk of harm, both physically and psychologically, if the child were placed with the father based on his long history of criminal behavior, unstable lifestyle that included drugs, domestic violence, homelessness, and child endangerment. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. *Spangler v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 404, — S.W.3d — (2012).

Termination of the mother's parental rights was affirmed because the mother did not challenge the circuit court's determination that she was in no position to have her children returned to her and the circuit court's determination that termination was in the children's best interest

in this case was not clearly erroneous. *Davis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 419, — S.W.3d — (2012).

Trial court's finding that termination of the mother's rights was in the children's best interests was not clearly erroneous; the mother did not argue that the children were not adoptable, there was evidence that she did not regularly visit the children, her housing was inadequate for the children, and her employment status indicated a genuine concern concerning her ability to care for the children. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, — S.W.3d — (2012).

Trial court did not clearly err in finding by clear and convincing evidence that it was in a child's best interest to terminate her mother's parental rights where it was clear that the mother's aggressive and oppositional behavior could potentially harm the health and safety of the child if the child were ever returned to her. Among other things: (1) the mother's foster mother testified that the mother was verbally aggressive, refused to comply with house rules, and became so unruly that the foster mother had to call the police; (2) the mother failed to complete her trial placement with her child because she would not cooperate with the department of human services; and (3) the circuit court also specifically found that the mother failed to comply with its orders to attend school and to eliminate any social networking profiles. *B.H.1 v. Ark. HHS*, 2012 Ark. App. 532, — S.W.3d — (2012).

Trial court did not err in finding that termination of a mother's parental rights was in her child's best interest under subdivision (b)(3)(A) of this section because the mother tested positive for drugs during the case, she had no job or her own residence, she had encountered criminal charges, and she rarely visited the child when allowed. *Lovell v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 547, — S.W.3d — (2012).

Termination of a mother's parental rights was in the child's best interest because the children came into state custody due to her arrest for drug-related offenses, the mother chose to use methamphetamine, which only exacerbated her existing drug problem, and a witness recommended to the court that the mother's parental rights be terminated because the children needed permanency. *Gutierrez v.*

Ark. Dep't of Human Servs., 2012 Ark. App. 575, — S.W.3d — (2012).

Termination of parental rights was proper, because despite efforts of the Arkansas Department of Human Services, reunification would be contrary to the health, safety and welfare of the children, and termination was in the children's best interest; risk of potential harm to the children if returned to the father was evidenced by his continuing inability to maintain employment, stable housing or transportation, and his failure to avail himself of services offered by the Department. *Bradbury v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 680, — S.W.3d —, 2012 Ark. App. LEXIS 793 (Nov. 28, 2012).

Continuance for Good Cause.

Termination of the mother's parental rights was proper under subsection (d) of this section because the mother failed to show on appeal that the circuit court abused its discretion in denying her request for a continuance. In her brief, the mother offered no discussion or analysis of why the circuit court's denial of her motion for continuance constituted an abuse of discretion or caused her prejudice; rather, she simply stated that by denying the motion, the trial court abused its discretion. *Renfro v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 419, — S.W.3d — (2011).

Evidence.

There was no error in the finding that there was clear and convincing evidence of facts warranting the termination of parental rights because the circuit court was presented with evidence containing direct statements from the potential adoptive parents that they wanted to adopt the children and neither subdivision (b)(3) of this section nor case law, required any specific quantum of evidence. *Renfro v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 419, — S.W.3d — (2011).

Clear and convincing evidence supported a determination under subdivisions (b)(3)(A) and (B) of this section to terminate a mother's parental rights over her minor children; although she cooperated with the case plan, she made very little progress due to her lack of cognitive ability, inability to reason, and low level of functioning, and she was unable to provide for their basic necessities. *Anderson*

v. Ark. Dep't of Human Servs., 2011 Ark. App. 526, — S.W.3d — (2011).

Sufficient evidence supported termination of the mother's parental rights under subdivisions (b)(3)(B)(i)(a) and (b)(3)(B)(vii)(a) of this section as she was unable to demonstrate that, once she was released from jail, she would be able to provide a stable home or sufficient income; prior to her incarceration, she had failed to maintain stable and sufficient income; the record was replete with incidents indicating her poor judgment; the children had spent over 75 percent of their lives in foster care; and the mother had been given ample opportunity to correct the problems giving rise to the children's removal from her home and had not done so. *Torres v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 423, — S.W.3d — (2012).

Appellant's lack of compliance with the case plan and court orders, including his failure to submit to drug screens and testing positive for drugs, as well as his failure to obtain stable housing, employment, or income, supported a grant of termination of parental rights according to the "subsequent other factors" ground under subdivision (b)(3)(B)(vii)(a) of this section. Because there was no meritorious argument that there was insufficient evidence to terminate his parental rights, counsel's motion to withdraw was granted. *Cotton v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 455, — S.W.3d — (2012).

Trial court did not err in finding clear and convincing evidence of facts warranting termination of appellants' parental rights under subdivision (b)(3) of this section, because the child had been out of the home for twelve months due to unclean conditions and appellants' drug and alcohol abuse, appellants failed to remedy the situation that led to the removal of the child, and her continued instability was hazardous to her well-being. *Bryant v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 491, — S.W.3d — (2012).

Clear and convincing evidence under subdivision (b)(3) of this section supported the termination of a mother's parental rights to her child because the mother lied to the trial court about her continued involvement with the child's father and allowed him to see the child despite orders forbidding such contact. *Duncan v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 13,

— S.W.3d —, 2013 Ark. App. LEXIS 8 (Jan. 16, 2013).

Failure to Preserve.

Where a mother failed to appeal prior orders in which a trial court determined that the social service agency had made meaningful efforts towards reunification in a parental rights termination proceeding, the issue of whether reasonable efforts were made could not be raised on appeal as it was waived. *Cariker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 574, — S.W.3d — (2011).

Appellant putative father could not argue on appeal that the trial court was not authorized to terminate his parental rights as another man had been named as the minor child's legal father due to his marriage to the child's mother because appellant did not raise that issue before the trial court. *Johnson v. Ark. HHS*, 2012 Ark. App. 537, — S.W.3d — (2012).

Findings.

Court properly terminated parental rights because the parents' drug use led to their inability to care for their children, causing them to leave the children in the custody of family members who could not provide for the children. While the parents had made progress while incarcerated, they had not shown the capacity to remain drug-free outside of prison or to properly provide for their children; they admittedly did not follow the case plan or take advantage of services offered. *Tankersley v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 109, — S.W.3d — (2012).

Grandparents.

Termination of the parents' parental rights to their daughter was appropriate because the issue before the circuit court at the termination hearing was a petition for termination of parental rights and not a custody, guardianship, or adoption petition. The parents failed to advance any new or persuasive argument that a grandmother's willingness to care for the child somehow precluded the termination of their parental rights. *Ogden v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 577, — S.W.3d — (2012).

Grounds.

Mother's rights were terminated pursuant to subdivision (b)(3)(B)(vii)(a) of this section because within five months of hav-

ing her children returned she was arrested for sixteen felony counts of forgery, and three months after that, she was charged with six felony drug charges, including selling pain medication prescribed for her ill daughter. She was not employed, the children could not live at the halfway house she entered after being released from jail, and the children had been out of her custody for a total of nearly four years. *Stewart v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 577, — S.W.3d — (2011).

Termination of the father's parental rights to his three children was affirmed because after appellant was allowed unsupervised overnight visits with the children, one of the children made new allegations of inappropriate touching and another developed nightmares and other issues that resolved when the visits stopped. *Murray v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 588, — S.W.3d — (2011).

Termination of the parental rights of appellants to their two minor children was affirmed because despite the services provided by the Arkansas Department of Human Services, the mother continued to abuse alcohol and thus failed to remedy the conditions that caused the children's removal from her custody. *Burnett v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 596, — S.W.3d — (2011).

Termination of parental rights was appropriate because the written judgment referenced the Arkansas Department of Human Services' petition, there was evidence to support termination under subdivision (b)(3)(B)(vii)(a) of this section, and the mother had abandoned the child. *Nespor v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 745, — S.W.3d — (2011).

Trial court did not err in terminating a mother's parental rights to her five children because due to the children testing positive on their drug screens, they were subjected to aggravated circumstances, as defined in subdivision (b)(3)(B)(ix)(a)(3)(B)(i) of this section. *Reichard v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 762, — S.W.3d — (2011).

Trial court did not err in terminating a mother's parental rights to her child under subdivision (b)(3)(B)(ix)(a)(3)(B)(i) of this section because there were no additional services that could be offered to make her a fit parent, and the services

offered failed to give her any insight into proper parenting; there were also two different occurrences of unexplained injuries to the child's face. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 791, — S.W.3d — (2011).

Order terminating appellant's parental rights to her children was affirmed because the trial court had evidence with which to consider the likelihood of the children's adoption and made a finding that they were likely to be adopted; the adoption specialist stated that she had been able to find adoptive parents for sibling groups. *Bayron v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 75, — S.W.3d — (2012).

Trial court did not err under subdivision (b)(3)(B)(ix)(a)(3)(B)(i) of this section in terminating parents' rights to their child because the child had been subjected to aggravated circumstances based on sexual abuse by her adoptive father; given the family's attitudes and lack of progress toward reunification after more than one year of services, the finding that termination was in the child's best interest was not erroneous. *Draper v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 112, — S.W.3d — (2012).

Termination of the mother's parental rights was appropriate pursuant to subdivisions (b)(3)(B)(i)(a) and (vii)(a) of this section because she had been unable to adequately deal with her methamphetamine addiction, despite services being offered; she refused to provide samples for several drug tests; she falsified her urine on other drug tests; and she had been held in contempt numerous times for failing drug tests. *Fetters v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 152, — S.W.3d — (2012).

Trial court did not err in terminating a mother's parental rights under subdivision (b)(3)(B)(i)(a) of this section because her children were removed from her custody due to inadequate supervision, environmental neglect, and her unfitness due to alcohol abuse; at the time of the termination hearing 13 months later, she was not in compliance with the majority of the case plan. *Lewis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 154, — S.W.3d — (2012).

Trial court did not err under subdivision (b)(3)(B)(vi)(a) of this section in terminating a father's parental rights to his three

children because one of the children maintained that he sexually abused her and that she did not want to go home with him because she believed the abuse would continue; a caseworker did not believe that the children could be safely placed back with him. *Blanchard v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 215, — S.W.3d — (2012).

Court properly terminated a mother's parental rights because the mother did not demonstrate that she was able to provide a stable home or sufficient income, she did not demonstrate appropriate decision-making regarding her relationships and roommates, and the children had a "high likelihood" of adoption. *Reed v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 369, — S.W.3d — (2012).

Trial court did not err in terminating the mother's parental rights because there was sufficient evidence to support a finding that termination was in the child's best interest, and the Arkansas Department of Human Services had proved that the mother had abandoned the child and had subjected him to aggravated circumstances under subdivision (b)(3)(B)(ix)(a)(3)(B) of this section and § 9-27-303(1). Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. *Fant v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 428, — S.W.3d — (2012).

In a termination of parental rights case under this section, even though a mother contended that a meaningful effort was not made to rehabilitate her and to correct the conditions that caused the removal of the children, she did not challenge either of the grounds upon which the trial court's order was based. Moreover, reasonable efforts did not require the cleaning of the mother's house for her. *Lowery v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 478, — S.W.3d — (2012).

Finding that the department of human services proved at least one ground for termination was not clearly erroneous, given in part that (1) there was testimony that while the mother had housing, it was not stable housing, (2) as of the date of the hearing, the only housing she had was inadequate to meet the basic needs of the children, (3) there was testimony that she had a spotty work history and she was at her current job for only one month, and (4) her visitation with the children was spo-

radic and it was disruptive to the children when she failed to attend visitations. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, — S.W.3d — (2012).

Trial court's finding that the department of human services proved that a father did not maintain meaningful contact with the children was not clearly erroneous, given in part that (1) he only saw them four times in the four months before his arrest, and in the time that followed, his only attempt at contact was two letters to the children, (2) nothing indicated that he asked for permission to see the children or that he took advantage of any chances to see them that would have been available while he was in prison, and (3) although the department did not produce evidence that he did not provide support, the ground the trial court found was met with either a lack of support or a lack of meaningful contact. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, — S.W.3d — (2012).

Because the department of human services is required to prove only one statutory ground for termination under subdivision (b)(3)(B) of this section, it was not necessary for the court to consider the father's other arguments. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, — S.W.3d — (2012).

It was not clearly erroneous for the trial court to find that returning the child to the father would have subjected her to potential harm, given that he never advanced to a trial placement or overnight visits, nor did he request this, the child was bonded to her foster parents, and it was reasonable to find that taking her from them to live with the father who willingly had the bare minimum of contact with her would have subjected her to harm. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, — S.W.3d — (2012).

In the two years the child was in foster care, the father made two child support payments for a total of \$200, and he said he thought it was better for him to spend the money on her; this could have raised doubts about his willingness to support the child if the child was returned to him. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, — S.W.3d — (2012).

Court affirmed the termination of a father's parental rights to his child; there was a lack of the payment of child support,

plus there was evidence of questionable judgment on the father's part, including supporting the child being returned to the mother, although she was unfit to raise the child. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, — S.W.3d — (2012).

Trial court did not err in terminating a father's parental rights to his child pursuant to subdivision (b)(3)(B)(i)(a) of this section because the trial court's finding that the father had sexually abused his girlfriend's daughter and a psychiatrist's testimony that he was not a fit parent were sufficient evidence of potential harm; the alleged sexual abuse was the reason for removal more than 12 months before. *Gipson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 554, — S.W.3d — (2012).

Court properly terminated parental rights because a visit to the parents' home showed a garbage-strewn yard, a filthy kitchen, a filthy bathroom, and a house filled with thick smoke; there was concern that the father was tracking sewage into the house and that bacteria were being

brought into the house. *Gray v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 24, — S.W.3d —, 2013 Ark. App. LEXIS 26 (Jan. 23, 2013).

Imprisonment.

Trial court did not err under subdivision (b)(3)(B)(viii) of this section in terminating a mother's parental rights to her child because by the time she would be released from prison, the child would have spent more than half of the child's life in foster care; even then, there was no guarantee that the child would be immediately able to return to the mother's custody. *Hill v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 108, — S.W.3d — (2012).

Standard of Review.

Father did not challenge the finding that the child was adoptable, and thus the court had to examine if the finding that returning the child to the father would subject her to potential harm was clearly erroneous. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, — S.W.3d — (2012).

9-27-342. Proceedings concerning illegitimate juveniles.

CASE NOTES

Findings.

Termination of a father's parental rights to his children was affirmed because, despite the father's contention that there was a complete lack of evidence that the children were adoptable, the children's caseworker, who had worked on the case for over a year after its inception, testified at the termination hearing that

the children were adoptable, and the testimony from a caseworker or an adoption specialist that children were adoptable was alone sufficient to meet the clear and convincing standard to establish the children's adoptability. *Thompson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 124, — S.W.3d — (2012).

9-27-355. Placement of juveniles.

CASE NOTES

Cited: *Andrews v. Ark. Dep't of Human Servs. & Minor Children*, 2012 Ark. App. 22, — S.W.3d — (2012).

9-27-359. Fifteenth-month review hearing.**CASE NOTES****ANALYSIS**

Appeal.

Failure to Preserve.

Appeal.

Given that this section requires a trial court to authorize a termination of parental rights petition except on limited grounds after 15 months, the trial court's decision to award permanent-relative custody for parents' children, and still provide an opportunity for visitation with the parents, did not constitute error. Ander-

son v. Ark. Dep't of Human Servs., 2011 Ark. App. 522, — S.W.3d — (2011).

Failure to Preserve.

As parents failed to appeal prior reasonable-efforts findings regarding reunification services offered to them pursuant to § 9-27-338 and this section, an appellate court was precluded from reviewing those findings for the time periods covered by the prior orders. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 522, — S.W.3d — (2011).

SUBCHAPTER 4 — DIVISION OF DEPENDENCY-NEGLECT REPRESENTATION

A.C.R.C. Notes. Acts 2012, No. 244, § 29, provided: "DEPENDENCY-NEGLECT REPRESENTATION APPROPRIATION TRANSFER AUTHORITY. The Administrative Office of the Courts shall receive approval from the Chief Fiscal Officer of the State and Arkansas Legislative Council or Joint Budget Committee to transfer funds and appropriations between Item Numbers (01), (02), (03) (A) and (C) and (06) of Section 10 herein for the payment of employees and/or contractors providing legal services for the Division of Dependency-Neglect Representation.

"Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each

fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Administrative Office of the Courts may operate more efficiently if some flexibility is provided to the Administrative Office of the Courts authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

9-27-401. Creation — Representation for children and parents.

A.C.R.C. Notes. Acts 2012, No. 244, § 28, provided: "CONTRACTING WITH PUBLIC DEFENDERS. The Administrative Office of the Courts Division of Dependency-Neglect Representation shall have the authority to enter into a Professional

Services Agreement with a person who is serving as a part-time Public Defender or other part-time State Attorney and paid as an employee of the State of Arkansas when the Public Defender or other part-time State Attorney has been appointed to

provide Dependency-Neglect Services by a Circuit Judge. The part-time Public Defender or other part-time State Attorney shall be eligible for additional compensation which shall not be construed as exceeding the line item maximum for the grade of that position when the Adminis-

trative Office of the Courts reimburses the part-time Public Defender or other part-time State Attorney for Dependency-Neglect Representation services performed.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 5 — EXTENDED JUVENILE JURISDICTION

9-27-501. Extended juvenile jurisdiction designation.

CASE NOTES

Hearings.

Designation of the juvenile for extended juvenile jurisdiction (EJJ) was proper because his contention that the law-of-the-case doctrine barred the juvenile court from conducting an extended juvenile jurisdiction hearing and granting the state's motion for such a designation was rejected. In the criminal case, that court

reached no decision and provided no direction to the criminal court with respect to EJJ designation and upon remand the criminal court made no decision regarding EJJ designation; nothing required the criminal court to make a decision on the EJJ issues before the case was transferred to juvenile court. *N.D. v. State*, 2012 Ark. 265, — S.W.3d — (2012).

TITLE 12

LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS

SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS

CHAPTER.

12. CRIME REPORTING AND INVESTIGATIONS.

SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS

CHAPTER 8

DEPARTMENT OF ARKANSAS STATE POLICE

SUBCHAPTER 2 — POLICE OFFICERS

A.C.R.C. Notes. Acts 2012, No. 284, § 21, provided: "FLAGS. The Department of Arkansas State Police is hereby authorized to award one (1) United States flag to the family of any Arkansas State Police Commissioned Officer killed in the line of duty. This provision will be effective for

Arkansas State Police Commissioned Officers killed in the line of duty after July 1, 2011.

"The provisions of this section shall be in effect only from July 1, 2012 to June 30, 2013."

12-8-210. Insurance — Medical and hospital.

A.C.R.C. Notes. Acts 2012, No. 284, § 19, provided: “UNIFORM EMPLOYEE HEALTH INSURANCE PROGRAM REPORTING. The Department of Arkansas State Police shall report monthly to the Governor, the Chief Fiscal Officer of the State and to the Arkansas Legislative Council or Joint Budget Committee regarding the activity and condition for the uniformed employee health insurance plan. The report shall include, but not limited to, the beginning reserve fund balance, contributions made during the month, claims paid, and the ending fund

balance of the month. In the event it is determined that the cost to adequately maintain the uniform employee health insurance plan is not feasible within the existing resources available to the department, the 88th General Assembly shall study the feasibility and desirability of discontinuing the self-insurance program and instead provide medical and hospital insurance to uniform employees through the public employees insurance program.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 10**COMMUNICATIONS SYSTEMS****SUBCHAPTER 3 — ARKANSAS PUBLIC SAFETY COMMUNICATIONS ACT OF 1985**

A.C.R.C. Notes. Acts 2012, No. 213, § 11, provided: “ENHANCED 9-1-1 SYSTEM. Funds appropriated in Section 9 of this Act are to be allocated to support the deployment of a hosted supplemental 9-1-1 database service in Arkansas. This supplemental database should allow for Arkansans to provide information to 9-1-1 to be used in emergency scenarios. This database service should:

“a) Collect a variety of formatted data relevant to 9-1-1 and first responder needs. Among other items, this information should include photographs of the citizen, physical descriptions, medical information, household data, and emergency contacts.

“b) Allow for information to be entered by Arkansans via a secure website where they can elect to provide as little or as much information as they choose.

“c) Automatically display data provided by Arkansas to 9-1-1 call takers for all

types of phones (Landline, Mobile, VoIP) when a call is placed to 9-1-1 from a registered and confirmed phone number.

“d) Support the delivery of citizen information via a secure internet connection to all PSAPs within Arkansas.

“e) Service should work across all 9-1-1 call taking equipment in Arkansas and allow for the easy transfer of information into Computer Aided Dispatch (CAD) or Records Management Systems (RMS).

“f) Data should be made available at a city, county, state, or national level to help protect Arkansans wherever they are.

“g) Data should be made available to first responders.

“h) Be designed to work in today’s environment or future i3-based systems.

“i) Demonstrate the ability to assist Arkansans with functional needs such as the deaf and hard of hearing, families with autism, physical and mental disabilities, and special rescue needs.”

CHAPTER 12**CRIME REPORTING AND INVESTIGATIONS****SUBCHAPTER.**

9. SEX OFFENDER REGISTRATION ACT OF 1997.

17. ADULT AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT ACT.

SUBCHAPTER 3 — STATE CRIME LABORATORY

12-12-312. Records confidential and privileged — Exception — Release.

CASE NOTES

Photocopying Costs.

Petitioner failed to show he had a right to copies of a report on latent fingerprint analysis, because indigency alone did not entitle a petitioner to free photocopying,

and the petitioner had not fully established that the document that he sought existed or if it did exist, that it was not furnished to his counsel at trial. *Hill v. State*, 2012 Ark. 309, — S.W.3d — (2012).

12-12-313. Records as evidence — Analyst’s testimony.

CASE NOTES

ANALYSIS

Crime Lab Report.
Right of Confrontation.

Crime Lab Report.

State presented substantial evidence through testimony from a forensic chemist from the state crime laboratory, although he did not perform the lab analysis for a substance obtained from a controlled buy involving defendant, and the lab report indicated that the substance contained methamphetamine, to show that the substance sold by defendant was a controlled substance under this section. *Jackson v. State*, 2011 Ark. App. 528, — S.W.3d — (2011).

Right of Confrontation.

Although defendant argued that the introduction of a crime laboratory report without the chemist being available for cross-examination violated his right to confront the witnesses against him, defendant failed to give the required notice requesting the analyst’s presence. Defendant cited no authority for his argument that he was excused from the notice requirement because the analyst, who was on maternity leave and was not called as a witness by the prosecution, appeared on the prosecution’s witness list. *Jones v. State*, 2011 Ark. App. 683, — S.W.3d — (2011).

SUBCHAPTER 9 — SEX OFFENDER REGISTRATION ACT OF 1997

SECTION.

12-12-906. Duty to register or verify registration generally — Re-

view of requirements with offenders.

12-12-901. Title.

RESEARCH REFERENCES

ALR. Validity and Applicability of State Requirement That Person Convicted or Indicted of Sex Offenses Be Subject to Electronic Location Monitoring, Including Use of Satellite or Global Positioning System. 57 A.L.R.6th 1.

Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions. 63 A.L.R.6th 351.

Validity, Construction and Application of State Sex Offender Registration Statutes Concerning Level of Classification — General Principles, Evidentiary Matters, and Assistance of Counsel. 64 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65

A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1.

12-12-903. Definitions.

CASE NOTES

Postconviction Relief Denied.

Denial of postconviction relief under Ark. R. Crim. P. 37.1 was proper, because correction of the judgment to reflect the requirements of the Sex Offender Registration Act of 1997 (SORA), §§ 12-12-901 to 12-12-923, did not demonstrate error so fundamental as to render the judgment void and subject to collateral attack pursuant to Ark. R. Crim. P. 37.1; since the

petitioner pled guilty to false imprisonment in the first degree of a minor victim, which was a designated crime at the time he was sentenced pursuant to subdivision (12)(A)(i)(r) of this section, he was subject to SORA requirements regardless of whether it was reflected on the original judgment. *Justus v. State*, 2012 Ark. 91, — S.W.3d — (2012).

12-12-904. Failure to comply with registration and reporting requirements — Refusal to cooperate with assessment process.

RESEARCH REFERENCES

ALR. Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions. 63 A.L.R.6th 351.

Validity, Construction and Application of State Sex Offender Registration Statutes Concerning Level of Classification — General Principles, Evidentiary Matters, and Assistance of Counsel. 64 A.L.R.6th 1.

Validity, Construction, and Application

of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1.

CASE NOTES

ANALYSIS

Construction With Other Law.
Evidence.

Construction With Other Law.

Trial court did not clearly err in finding that defendant made no effort to comply with sexual-offender registration requirements. Therefore, the trial court properly revoked defendant's suspended sentence. *Muldrew v. State*, 2012 Ark. App. 568, — S.W.3d — (2012).

Evidence.

During defendant's trial for failure to register as a sex offender, the admission of a judgment and commitment order from a 2004 conviction on a charge of failure to register as a sex offender was neither prejudicial nor probative because the offense was a strict-liability offense; at worst, the evidence could be viewed as irrelevant or cumulative. *Reed v. State*, 2012 Ark. App. 225, — S.W.3d — (2012).

**12-12-906. Duty to register or verify registration generally —
Review of requirements with offenders.**

(a)(1)(A)(i) At the time of adjudication of guilt, the sentencing court shall enter on the judgment and commitment or judgment and disposition form that the offender is required to register as a sex offender and shall indicate whether the:

(a) Offense is an aggravated sex offense;

(b) Sex offender has been adjudicated guilty of a prior sex offense under a separate case number; or

(c) Sex offender has been classified as a sexually violent predator.

(ii) If the sentencing court finds the offender is required to register as a sex offender, then at the time of adjudication of guilt the sentencing court shall require the sex offender to complete the sex offender registration form prepared by the Director of the Arkansas Crime Information Center pursuant to § 12-12-908 and shall forward the completed sex offender registration form to the Arkansas Crime Information Center.

(B)(i) The Department of Correction shall ensure that a sex offender received for incarceration has completed the sex offender registration form.

(ii) If the Department of Correction cannot confirm that the sex offender has completed the sex offender registration form, the Department of Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(C)(i) The Department of Community Correction shall ensure that a sex offender placed on probation or another form of community supervision has completed the sex offender registration form.

(ii) If the Department of Community Correction cannot confirm that the sex offender has completed the sex offender registration form, the Department of Community Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(D)(i) The Arkansas State Hospital shall ensure that the sex offender registration form has been completed for any sex offender found not guilty by reason of insanity and shall arrange an evaluation by Sex Offender Screening and Risk Assessment.

(ii) If the Arkansas State Hospital cannot confirm that the sex offender has completed the sex offender registration form, the Arkansas State Hospital shall ensure that the sex offender registration form is completed for the sex offender upon intake, release, or discharge.

(2)(A) A sex offender moving to or returning to this state from another jurisdiction shall register with the local law enforcement agency having jurisdiction within three (3) business days after the sex offender establishes residency in a municipality or county of this state.

(B)(i) Any person living in this state who would be required to register as a sex offender in the jurisdiction in which he or she was

adjudicated guilty of a sex offense shall register as a sex offender in this state whether living, working, or attending school or other training in Arkansas.

(ii) A nonresident worker or student who enters the state shall register in compliance with Pub. L. No. 109-248, as it existed on January 1, 2007.

(C) A sex offender sentenced and required to register outside of Arkansas shall:

(i) Submit to assessment by Sex Offender Screening and Risk Assessment;

(ii) Provide a deoxyribonucleic acid (DNA) sample if a sample is not already accessible to the State Crime Laboratory; and

(iii)(a) Pay the mandatory fee of two hundred fifty dollars (\$250) to be deposited into the DNA Detection Fund established by § 12-12-1119 within ninety (90) days from the date of registration.

(b) Failure to pay the fee required under subdivision (a)(2)(C)(iii)(a) of this section is a Class A misdemeanor.

(b)(1) The registration file of a sex offender who is confined in a correctional facility or serving a commitment following acquittal on the grounds of mental disease or defect shall be inactive until the registration file is updated by the department responsible for supervision of the sex offender.

(2) Immediately prior to the release or discharge of a sex offender or immediately following a sex offender's escape or his or her absconding from supervision, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall update the registration file of the sex offender who is to be released or discharged or who has escaped or has absconded from supervision.

(c)(1)(A) When registering a sex offender as provided in subsection (a) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall:

(i) Inform the sex offender of the duty to submit to assessment and to register and obtain the information required for registration as described in § 12-12-908;

(ii) Inform the sex offender that if the sex offender changes residency within the state, the sex offender shall give the new address and place of employment, education, higher education, or training to the Arkansas Crime Information Center in writing no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address;

(iii)(a) Inform the sex offender that if the sex offender changes residency to another state or enters another state to work or attend school, the sex offender must also register in that state regardless of permanent residency.

(b) The sex offender shall register the new address and place of employment, education, higher education, or training with the center

and with a designated law enforcement agency in the new state not later than three (3) business days after the sex offender establishes residence or is temporarily domiciled in the new state;

(iv) Obtain fingerprints and a photograph of the sex offender if these have not already been obtained in connection with the offense that triggered registration;

(v) Obtain a deoxyribonucleic acid (DNA) sample if one has not already been provided;

(vi) Require the sex offender to complete the entire registration process, including, but not limited to, requiring the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been explained;

(vii) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the center in writing no later than three (3) business days after the sex offender establishes residency;

(viii) Inform a sex offender who has been granted probation that failure to comply with the provisions of this subchapter may be grounds for revocation of the sex offender's probation; and

(ix) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(a) Verify registration and obtain the information required for registration verification as described in subsections (g) and (h) of this section; and

(b) Ensure that the information required for reregistration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction.

(B)(i) Any offender required to register as a sex offender must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registering if a sample has not already been provided to the State Crime Laboratory.

(ii) Any offender required to register as a sex offender who is entering the State of Arkansas must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registration and must pay the mandatory fee of two hundred fifty dollars (\$250) to be deposited into the DNA Detection Fund established by § 12-12-1119.

(2) When updating the registration file of a sex offender, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall:

(A) Review with the sex offender the duty to register and obtain current information required for registration as described in § 12-12-908;

(B) Review with the sex offender the requirement that if the sex offender changes address within the state, the sex offender shall give the new address to the center in writing no later than ten (10) days

before the sex offender establishes residency or is temporarily domiciled at the new address;

(C) Review with the sex offender the requirement that if the sex offender changes address to another state, the sex offender shall register the new address with the center and with a designated law enforcement agency in the new state not later than three (3) business days after the sex offender establishes residence or is temporarily domiciled in the new state if the new state has a registration requirement;

(D) Require the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been reviewed;

(E) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the center in writing no later than three (3) business days after the sex offender establishes residency;

(F) Review with the sex offender the consequences of failure to provide any information required by subdivision (b)(2) of this section;

(G) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(i) Verify registration and report the information required for registration verification as described in subsections (g) and (h) of this section; and

(ii) Ensure that the information required for registration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction; and

(H) Review with a sex offender subject to lifetime registration under § 12-12-919 the consequences of failure to verify registration under § 12-12-904.

(d) When registering or updating the registration file of a sexually violent predator, in addition to the requirements of subdivision (c)(1) or (2) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall obtain documentation of any treatment received for the mental abnormality or personality disorder of the sexually violent predator.

(e) Any sex offender working, enrolled, or volunteering in a public or private elementary, secondary or postsecondary school, or institution of training shall notify the center of that status and shall register with the local law enforcement agency having jurisdiction over that campus.

(f)(1) An offender required to register pursuant to this subchapter shall not change his or her name unless the change is:

(A) Incident to a change in the marital status of the sex offender; or

(B) Necessary to effect the exercise of the religion of the sex offender.

(2) The change in the sex offender's name shall be reported to the Director of the Arkansas Crime Information Center within ten (10) calendar days after the change in name.

(3) A violation of this subsection is a Class C felony.

(g)(1) Except as provided in subsection (h) of this section, a sex offender subject to lifetime registration under § 12-12-919 shall report in person every six (6) months after registration to the local law enforcement agency having jurisdiction to verify registration.

(2) The local law enforcement agency having jurisdiction may determine the appropriate times and days for reporting by the sex offender, and the determination shall be consistent with the reporting requirements of subdivision (g)(1) of this section.

(3) Registration verification shall include reporting any change to the following information concerning the sex offender:

- (A) Name;
- (B) Social security number;
- (C) Age;
- (D) Race;
- (E) Gender;
- (F) Date of birth;
- (G) Height;
- (H) Weight;
- (I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment;

(L) Vehicle make, model, color, and license tag number that the sex offender owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sex offender's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sex offender's fingerprints; and

(b) Submit the fingerprints to the center and to the Department of Arkansas State Police;

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sex offender at each registration verification and submit the photograph to the center;

(O) All computers or other devices with Internet capability to which the sex offender has access;

(P) All email addresses used by the sex offender; and

(Q) All user names, screen names, or instant message names that are used by the sex offender to communicate in real time with another person using the Internet.

(4) If the sex offender is enrolled or employed at an institution of higher education in this state, the sex offender shall also report to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution of higher education where he or she is enrolled or employed, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sex offender is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sex offender shall report the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sex offender is a vessel, live-aboard vessel, or houseboat, the sex offender shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

(h)(1) A sexually violent predator subject to lifetime registration under § 12-12-919 shall report in person every three (3) months after registration to the local law enforcement agency having jurisdiction to verify registration.

(2) The local law enforcement agency having jurisdiction may determine the appropriate times and days for reporting by the sexually violent predator, and the determination shall be consistent with the reporting requirements of subdivision (h)(1) of this section.

(3) Registration verification shall include reporting any change to the following information concerning the sexually violent predator:

(A) Name;

(B) Social security number;

(C) Age;

(D) Race;

(E) Gender;

(F) Date of birth;

(G) Height;

(H) Weight;

(I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment;

(L) Vehicle make, model, color, and license tag number that the sexually violent predator owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sexually violent predator's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sexually violent predator's fingerprints; and

(b) Submit the fingerprints to the center and to the Department of Arkansas State Police;

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sexually violent predator at each registration verification and submit the photograph to the center;

(O) All computers or other devices with Internet capability to which the sex offender has access;

(P) All email addresses used by the sex offender; and

(Q) All user names, screen names, or instant message names that are used by the sex offender to communicate in real time with another person using the Internet.

(4) If the sexually violent predator is enrolled or employed at an institution of higher education in this state, the sexually violent predator shall also report to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution of higher education where he or she is enrolled or employed, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sexually violent predator is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sexually violent predator shall report the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sexually violent predator is a vessel, live-aboard vessel, or houseboat, the sexually violent predator shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

(i) Within three (3) days after verifying the registration of a sex offender under subsection (g) of this section or a sexually violent predator under subsection (h) of this section, the local law enforcement agency having jurisdiction shall report by written or electronic means all information obtained from or provided by the sex offender or sexually violent predator to the center.

History. Acts 1997, No. 989, § 5; 1999, No. 1353, § 4; 2001, No. 202, §§ 1-3; 2001, No. 1089, § 1; 2001, No. 1743, § 5; 2003, No. 1185, § 18; 2003, No. 1265, § 4[3]; 2003 (2nd Ex. Sess.), No. 21, § 4; 2005, No. 1962, § 34; 2006 (1st Ex. Sess.), No. 4, § 3; 2007, No. 394, § 5; 2011, No. 143, §§ 1, 2; 2011, No. 1009, § 1.

A.C.R.C. Notes. As enacted, Acts 2011, No. 143, contained two sections designated as § 1.

Publisher's Notes. This section is being set out to reflect a stylistic correction in (a)(2)(C)(iii)(b).

Amendments. The 2011 amendment by No. 143 deleted "beginning April 7, 2006" following "of this section" in (g)(1); inserted (O) through (Q) in (g)(3) and (h)(3); inserted "of higher education where he or she is enrolled or employed" in (g)(4)(A) and (h)(4)(A); and deleted "Beginning on March 21, 2007" at the beginning of (h)(1).

The 2011 amendment by No. 1009 added (a)(2)(C)(iii)(b); and added "within ninety (90) days from the date of registration" to the end of (a)(2)(C)(iii)(a).

RESEARCH REFERENCES

ALR. Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions. 63 A.L.R.6th 351.

Validity, Construction and Application of State Sex Offender Registration Statutes Concerning Level of Classification — General Principles, Evidentiary Matters, and Assistance of Counsel. 64 A.L.R.6th 1.

Validity, Construction, and Application

of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1.

CASE NOTES

Postconviction Relief Denied.

Denial of postconviction relief under Ark. R. Crim. P. 37.1 was proper, because correction of the judgment to reflect the requirements of the Sex Offender Registration Act of 1997 (SORA), §§ 12-12-901 to 12-12-923, did not demonstrate error so fundamental as to render the judgment void and subject to collateral attack pur-

suant to Ark. R. Crim. P. 37.1; since the petitioner pled guilty to false imprisonment in the first degree of a minor victim, which was a designated crime at the time he was sentenced pursuant to § 12-12-903(12)(A)(i)(r), he was subject to SORA requirements regardless of whether it was reflected on the original judgment. *Justus v. State*, 2012 Ark. 91, — S.W.3d — (2012).

12-12-917. Evaluation protocol — Sexually violent predators — Juveniles adjudicated delinquent — Examiners.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1.

12-12-919. Termination of obligation to register.

CASE NOTES

Registration Requirements.

As the Arkansas Code Revision Commission substantively altered Act no. 21, Ark. Acts 2005 in its codification of subdivision (b)(2)(A) of this section, in a manner that changed its meaning, a probationer may apply to terminate his or her obligation to register as a sex offender 15 years after being placed on probation. Further,

the probationer is entitled to relief upon a showing by a preponderance of the evidence that he or she has not been adjudicated of a sex offense during that 15-year-time period and he or she is not likely to pose a threat to the safety of others. Harrell v. State, 2012 Ark. 421, — S.W.3d —, 2012 Ark. LEXIS 438 (Nov. 8, 2012).

12-12-923. Electronic monitoring of sex offenders.

RESEARCH REFERENCES

ALR. Validity and Applicability of State Requirement That Person Convicted or Indicted of Sex Offenses Be Subject to Electronic Location Monitoring, Including Use of Satellite or Global Positioning System. 57 A.L.R.6th 1.

SUBCHAPTER 17 — ADULT AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT ACT

SECTION.

12-12-1715. Rights of subject of report — Investigative determina-

tion of the Department of Human Services — Notice of finding — Appeal.

12-12-1715. Rights of subject of report — Investigative determination of the Department of Human Services — Notice of finding — Appeal.

(a) Upon completion of an investigation, the Department of Human Services shall determine that an allegation of adult maltreatment or long-term care facility maltreatment is either:

(1)(A) Unfounded, a finding that shall be entered if the allegation is not supported by a preponderance of the evidence.

(B)(i) An unfounded report shall be expunged one (1) year after the completion of the investigation.

(ii) Demographic information may be retained for statistical purposes; or

(2)(A) Founded, a finding that shall be entered if the allegation is supported by a preponderance of the evidence.

(B) A determination of founded but exempt shall be entered on a report if an adult practicing his or her religious beliefs is receiving spiritual treatment under § 5-28-105 or § 12-12-1704.

(b)(1)(A) After making an investigative determination, the department shall notify in writing within ten (10) business days:

(i)(a) The person identified as the offender.

(b) However, in cases of unfounded self-neglect, no notice is required;

(ii) Either the:

(a) Person identified as the maltreated person;

(b) Legal guardian of the maltreated person; or

(c) Natural or legal guardian of a long-term care facility resident under eighteen (18) years of age;

(iii) The current administrator of the long-term care facility if the incident occurred in a long-term care facility; and

(iv) If known by the Office of Long-Term Care, the administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred.

(B) If the investigation determines that the report is founded, notification to the offender shall be by process server or by certified mail, restricted delivery.

(2) The notification under subdivision (b)(1) of this section shall include the following:

(A) The investigative determination, exclusive of the source of the notification, including the nature of the allegation and the date and time of occurrence;

(B) A statement that an offender of a founded report has the right to an administrative hearing upon a timely request;

(C) A statement that the request for an administrative hearing shall be made to the department within thirty (30) days of receipt of the notice of determination;

(D) A statement that the administrative hearing will be by telephone hearing unless the offender requests an in-person hearing within thirty (30) days after the date of receipt of notice of the determination;

(E) A statement of intent to report in writing after the offender has had an opportunity for an administrative hearing the founded investigative determination to:

(i) The Adult and Long-term Care Facility Resident Maltreatment Central Registry; and

(ii) Any applicable licensing authority;

(F) A statement that the offender's failure to request an administrative hearing in writing within thirty (30) days from the date of receipt of the notice will result in submission of the investigative report, including the investigative determination, to:

(i) The registry; and

(ii) Any applicable licensing authority;

(G) The consequences of waiving the right to an administrative hearing;

(H) The consequences of a finding by a preponderance of the evidence through the administrative hearing process that the maltreatment occurred;

(I) The fact that the offender has the right to be represented by an attorney at the offender's own expense; and

(J) The name of the person making the notification, his or her occupation, and the location at which he or she can be reached.

(c)(1) The administrative hearing process shall be completed within one hundred twenty (120) days from the date of the receipt of the request for a hearing unless waived by the offender.

(2) The department shall hold the administrative hearing at a reasonable place and time.

(3) For an incident occurring in a long-term care facility, the department may not make a finding that an offender has neglected a long-term care facility resident if the offender demonstrates that the neglect was caused by factors beyond the control of the offender.

(4) A delay in completing the administrative hearing process that is attributable to the offender shall not count against the time limit in subdivision (c)(1) of this section.

(5) Failure to complete the administrative hearing process in a timely fashion shall not prevent the department or a court from:

(A) Reviewing the investigative determination of jurisdiction;

(B) Making a final agency determination; or

(C) Reviewing a final agency determination under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(6) If any party timely requests an in-person administrative hearing, the hearing officer may notify the parties that the hearing will be conducted by video conference.

(d) [Repealed.]

(e) If the department's investigative determination of founded is upheld during the administrative hearing process or if the offender does not timely appeal for or waives the right to an administrative hearing, the department shall report the investigative determination in writing within ten (10) business days to:

(1) The offender;

(2) The current administrator of the long-term care facility if the incident occurred in a long-term care facility;

(3) The administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred;

(4) The appropriate licensing authority;

(5) The registry;

(6) The maltreated person or the legal guardian of the maltreated person; and

(7) If required under § 21-15-110, the employer of any offender if the offender is in a designated position with a state agency.

History. Acts 2005, No. 1812, § 1; 2009, No. 525, § 3; 2011, No. 1139, § 1.

Publisher's Notes. This section is being set out to correct an error in the 2011 supplement.

Amendments. The 2011 amendment deleted (d).

CHAPTER 14

STATE CAPITOL POLICE

12-14-106. Additional salary payments.

A.C.R.C. Notes. Acts 2012, No. 286, § 12, provided: "STATE CAPITOL POLICE. In the event that sufficient revenues, in the judgment of the Secretary of State exist, the Secretary is hereby authorized to make additional salary payments from such funds to those employees who have attained law enforcement certification above the basic certificate level, as defined by the Arkansas Commission on Law Enforcement Standards. It is the intent of this Section that such payment shall be optional, at the discretion of the Secretary, dependent on sufficient revenues and shall not be implemented using funds specifically set aside for other programs within the Department.

"Employees shall be eligible for all or a portion of additional salary payments scheduled as follows:

"I. General Certificate — \$ 300 annually

"II. Intermediate Certificate — \$ 600 annually

"III. Advanced Certificate — \$ 900 annually

"IV. Senior Certificate — \$1,200 annually

"Payment of such funds may be made monthly, quarterly, semiannually or annually depending upon the availability of revenues and shall be restricted to the following classifications:

"1. Sec. of State Capitol Police Chief

"2. Sec. of State Police Sergeant

"3. Sec. of State Corporal

"4. Sec. of State Assistant Chief Capitol Police Captain

"Payments made under this Section which are awarded as partial or lump sum payments shall not be considered as salary for purposes of retirement benefits but shall be subject to withholding of all applicable federal and state taxes. Payments made under this Section shall not be construed as exceeding the maximum annual salary of the employee.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 18

CHILD MALTREATMENT ACT

SUBCHAPTER 1 — GENERAL PROVISIONS

12-18-103. Definitions.

CASE NOTES

Neglect.

Order for the Arkansas Department of Human Services to provide a pregnant

teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate

danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient.

In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

SUBCHAPTER 7 — INVESTIGATIVE FINDINGS

12-18-701. Generally.

CASE NOTES

Admission Error, But No Prejudice.

Although admission of portions of an investigator's report to the prosecutor were hearsay and were admitted in error, the child's grandmother failed to show prejudice because the trial court's ruling showed that it relied on the child's statements in a recorded interview in determining that she was dependent neglected

on the basis of sexual abuse. The DVD of the interview was entered into evidence independently and constituted sufficient evidence to support the dependency neglect adjudication without any reference to the prosecuting attorney's report. Berthelot v. Ark. Dep't of Human Servs., 2012 Ark. App. 249, — S.W.3d — (2012).

SUBCHAPTER 8 — ADMINISTRATIVE HEARINGS

12-18-803. Privileged communications as evidence — Exception.

CASE NOTES

Cited: Riley v. State, 2012 Ark. 462, — S.W.3d —, 2012 Ark. LEXIS 503 (Dec. 13, 2012).

SUBCHAPTER 9 — CHILD MALTREATMENT CENTRAL REGISTRY

12-18-908. Removal of name from the Child Maltreatment Central Registry.

CASE NOTES

Child Custody.

In denying appellant father's motion to change child custody, the trial court did not err in failing to apply § 9-13-101(c)(1), (2)'s presumption that it was not in the best interest of a child to remain in the custody of an abusive parent because the record was completely devoid of any evidence of domestic violence. While appellee

mother was placed on the child-maltreatment registry for a period of time pursuant to subdivision (b)(2) of this section for subjecting the child to a home that was filthy and infested with roaches, her poor housekeeping was not a form of domestic violence. Loftis v. Nazario, 2012 Ark. App. 98, — S.W.3d — (2012).

SUBCHAPTER 10 — PROTECTIVE CUSTODY**12-18-1001. Protective custody generally.****CASE NOTES****School Uniforms.**

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under subsection (a) of this section; there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to

prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

SUBTITLE 3. CORRECTIONAL FACILITIES AND PROGRAMS**CHAPTER 27****DEPARTMENT OF CORRECTION — DEPARTMENT OF COMMUNITY CORRECTION****12-27-103. Department of Correction — Creation — Powers and duties.**

A.C.R.C. Notes. Acts 2012, No. 266, § 20, provided: "JUVENILE SEX OFFENDER ASSESSMENT. The Arkansas Department of Correction is authorized to enter into a cooperative agreement with a qualified state treatment and assessment agency to conduct assessments of juvenile sex or child offenders as required by provisions of ACA 12-12-901 et. seq. and pay for services upon receipt of invoice.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 266, § 35, provided: "ES-

SENTIAL SERVICES STIPEND. The Arkansas Department of Correction (ADC) may award additional compensation to those exempt employees who are members of the emergency response unit. These employees are eligible to receive up to 3% per hour additional compensation for the actual number of hours that an employee spends on an emergency response action.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

12-27-114. Inmates in county jails — Reimbursement of county — Medical care.

A.C.R.C. Notes. Acts 2012, No. 266, § 15, provided: "COUNTY REIMBURSEMENT RATE RESTRICTION. Notwithstanding any other provision of law or departmental commitment which may ex-

ist to the contrary, the Board of Corrections shall not increase any reimbursement rate for payments made to any county for the purpose of reimbursing the expenses of the care and custody of state

inmates, without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 266, § 16, provided: "COUNTY JAIL REIMBURSEMENT. In the event the Department of Correction cannot accept inmates from county jails due to insufficient bed space, the Department shall reimburse the counties at a rate determined by the Chief Fiscal Officer of the State, after consultation with the Division of Legislative Audit and the Department of Correction, and upon approval by the Governor, until the appropriation and funding for such purpose, is exhausted. The reimbursement rate shall include the county's cost of transporting the inmates to the department. The appropriation provided by Item (06) of Section 3 may be used for contracts with county jails for pre release inmates.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 266, § 31, provided: "COUNTY JAIL INVOICE SUMMARY. The Departments of Correction and Community Correction, shall at a minimum and on a fiscal year basis, prepare and

post on the applicable agency web site, a monthly summary of county jail reimbursement invoices prepared and forwarded to each county sheriff for verification by the Departments and for payment from the County Jail Reimbursement Fund. In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed. Each fiscal year-end report shall be maintained on the web sites for a period of no less than three (3) years."

Acts 2012, No. 285, § 19, provided: "COUNTY JAIL INVOICE SUMMARY. The Departments of Correction and Community Correction, shall at a minimum and on a fiscal year basis, prepare and post on the applicable agency web site, a monthly summary of county jail reimbursement invoices prepared and forwarded to each county sheriff for verification by the Departments and for payment from the County Jail Reimbursement Fund. In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed. Each fiscal year-end report shall be maintained on the web sites for a period of no less than three (3) years."

12-27-130. Reimbursement of county.

A.C.R.C. Notes. Acts 2012, No. 266, § 15, provided: "COUNTY REIMBURSEMENT RATE RESTRICTION. Notwithstanding any other provision of law or departmental commitment which may exist to the contrary, the Board of Corrections shall not increase any reimbursement rate for payments made to any

county for the purpose of reimbursing the expenses of the care and custody of state inmates, without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

12-27-136. Services and equipment.

A.C.R.C. Notes. Acts 2012, No. 137, § 3, provided: "ASSISTANCE PROVISION. The Department of Correction and the Department of Community Correction may provide services, furnishings, equipment and office space to assist the Parole

Board in fulfilling the purposes for which the Board was created by law.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

12-27-141. Department of Correction Annual Report.

A.C.R.C. Notes. Acts 2012, No. 266, § 21, provided: "INMATE COST REPORTING — STATE FACILITIES.

"(a) Within 90 days of the close of each state fiscal year, the Arkansas Department of Correction (ADC) shall submit to the Arkansas Legislative Council a report of all direct and indirect costs incurred by the State of Arkansas in housing and caring for inmates incarcerated in the State's facilities. Such costs shall be calculated and reported in total for the Department and in total by each facility. The report shall also reflect overall cost per inmate per day, cost per inmate per day for each facility, overall cost per bed per day, and cost per bed per day for each facility.

"(b) In compiling costs and reporting to the Arkansas Legislative Council in accordance with subsection (a) of this section of this Act, the Department of Correction shall:

"(1) Record all expenditures in a manner that provides for the association of costs with each facility. Costs not directly attributable to a particular facility (overhead, administration, treatment, etc.) shall be allocated to each facility on the basis of inmate population.

"(2) Maintain documentation to support all elements of costs and cost reimbursement both in total and by facility;

"(3) Exclude capital outlay disbursements. However, depreciation expense for all ADC fixed assets shall be included. Depreciation expense not directly associated with the fixed assets of a particular facility shall be allocated to each facility on the basis of inmate population.

"(4) Include any interest expense incurred by ADC or another state governmental entity as a result of prison construction;

"(5) Exclude all payments to local governments for care of inmates housed in local government facilities;

"(6) Exclude all payments to local governments for Act 309 prisoners;

"(7) Include the state matching requirements associated with federal grant expenditures. Documentation shall be maintained sufficient to identify such costs by grant.

"(8) Deduct reimbursements for costs incurred. The amount of the reimbursement deducted shall be equal to or less than the cost with which the reimbursement is associated.

"(9) Include all ancillary costs. These costs shall include, but are not limited to:

"(A) ADC expenses incurred through fund transfers;

"(B) Retirement costs;

"(C) Audit costs;

"(D) ADC cost for shared employees paid by another state governmental entity;

"(E) Inmate educational and rehabilitation costs;

"(F) Inmate related expenses incurred by the Attorney General; however, expenses shall not include costs of defending Habeas Corpus cases.

"(c) In determining costs per inmate per day for reporting to the Arkansas Legislative Council in accordance with subsection (a) of this section, ADC shall:

"(1) Accumulate the number of inmates housed at each ADC facility each day throughout the state fiscal year for which costs are being reported. This accumulation shall result in total inmate days and shall be divided into total direct and indirect costs compiled in accordance with subsections (a) and (b) of this section.

"(2) Exclude those ADC inmates housed in local governmental facilities and Act 309 prisoners from the number of inmates housed at ADC facilities.

"(3) Maintain documentation supporting the number of inmates housed at ADC facilities."

CHAPTER 29
INMATES OF STATE FACILITIES

SUBCHAPTER 2 — GOOD TIME ALLOWANCE

12-29-201. Meritorious good time.

CASE NOTES

Applicability.

Because this section, changing how meritorious good-time credit was applied, did not impliedly repeal the language in § 16-90-121 (the deadly-weapon enhancement statute applicable at the time of an

inmate's sentence), the inmate's 30-year sentence for first-degree murder was subject to reduction by meritorious good-time credit at the conclusion of the first 10 years of the sentence. *Hobbs v. Baird*, 2011 Ark. 261, — S.W.3d — (2011).

SUBCHAPTER 5 — STATE PRISON INMATE CARE AND CUSTODY
REIMBURSEMENT ACT

12-29-501. Title.

CASE NOTES

ANALYSIS

Constitutionality.
Illustrative Cases.

from inmates whose account balances were greater than the cost of litigating the reimbursement under the Act. *MacKool v. State*, 2012 Ark. 287, — S.W.3d — (2012).

Constitutionality.

Supreme Court of Arkansas held that the application of the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507, to appellant and other inmates based solely on the balance in their inmate accounts did not violate the equal protection guarantee because the Act was rationally related to the legitimate government purpose of allowing the State to seek reimbursement for care and custody expenses

Illustrative Cases.

State was entitled to the \$5016.61 in appellant's inmate account under the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507, for a portion of the cost of housing appellant, because money appellant received as a gift from his mother that was deposited into the account was clearly within the Act's definition of the term "estate." *MacKool v. State*, 2012 Ark. 287, — S.W.3d — (2012).

12-29-502. Definitions.

CASE NOTES

Recovery from Estate.

State was entitled to the \$5016.61 in appellant's inmate account under the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507, for a portion of the cost of housing appellant. The Supreme Court

of Arkansas held that any money appellant received as a gift from his mother that was deposited into his inmate account was clearly within the definition of the term "estate" in subdivision (4) of this section. *MacKool v. State*, 2012 Ark. 287, — S.W.3d — (2012).

12-29-504. Reimbursement proceedings — Appointment of guardian.**CASE NOTES**

Cited: MacKool v. State, 2012 Ark. 287,
— S.W.3d — (2012).

12-29-507. Deposit of recovered moneys — Payment of costs.**CASE NOTES****Illustrative Cases.**

Because the state was entitled to the \$5016.61 in appellant's inmate account under the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507 for a portion of

the cost of housing appellant, the court ordered the deposit of that money into the state treasury in accordance with subdivision (a)(1) of this section. MacKool v. State, 2012 Ark. 287, — S.W.3d — (2012).

CHAPTER 41**LOCAL CORRECTIONAL FACILITIES****SUBCHAPTER 1 — GENERAL PROVISIONS**

A.C.R.C. Notes. Acts 2012, No. 266, § 34, provided: "LOCAL GOVERNMENT INMATE COST REPORT. Each calendar year, the Association of Arkansas Counties shall compile and submit a report to the Arkansas Legislative Council, of all costs incurred, excluding construction costs, by local government units housing inmates sentenced to the Department of Correction and Department of Community Correction. The cost report shall be a representative sample of all counties housing and caring for state inmates. The report shall be submitted no later than July 1 of the calendar year immediately following the reporting year.

"The Association of Arkansas Counties

in coordination with Legislative Audit shall determine which counties will be included in the sample and shall include a sufficient number of counties from each classification based upon population and each congressional district to ensure a fair representation of costs incurred. Guidelines for preparing this cost report shall be developed by the Division of Legislative Audit in coordination with the Association of Arkansas Counties. The Division of Legislative Audit shall test the accuracy of the information submitted during the routine audit of the applicable county.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 49
INTERSTATE COMPACTS

SUBCHAPTER 1 — INTERSTATE CORRECTIONS COMPACT

12-49-101. Title.

RESEARCH REFERENCES

ALR. Construction and Application of of Conditions and Rights and Responsibilities of Parties. 56 A.L.R.6th 553.
Interstate Corrections Compact and
Implementing State Laws — Equivalency

12-49-102. Text of Interstate Corrections Compact.

RESEARCH REFERENCES

ALR. Construction and Application of of Conditions and Rights and Responsibilities of Parties. 56 A.L.R.6th 553.
Interstate Corrections Compact and
Implementing State Laws — Equivalency

12-49-103. Director's powers.

RESEARCH REFERENCES

ALR. Construction and Application of of Conditions and Rights and Responsibilities of Parties. 56 A.L.R.6th 553.
Interstate Corrections Compact and
Implementing State Laws — Equivalency

SUBTITLE 4. MILITARY AFFAIRS

CHAPTER 61
MILITARY FORCES

SUBCHAPTER 1 — STATE MILITIA GENERALLY

12-61-124. Civilian juvenile student training programs.

A.C.R.C. Notes. Acts 2012, No. 58, § 16, provided: "CIVILIAN STUDENT TRAINING PROGRAM TRANSPORTATION. Transportation to support Civilian Student Training program activities for juvenile participants and staff may be provided by commercial lease/purchase of motor vehicles not to exceed six vehicles at Camp Joseph T. Robinson.
"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

12-61-125. National Guard Youth Challenge Program — Stipend.

A.C.R.C. Notes. Acts 2012, No. 58, § 17, provided: “YOUTH CHALLENGE PROGRAM — STIPENDS. Juvenile participants in the Arkansas National Guard Youth Challenge Program at Camp Joseph T. Robinson receiving services from the Arkansas National Guard are authorized to receive a monetary stipend, not to exceed fifteen dollars (\$15.00) per week to defray personal hygiene and other personal necessities, and a monetary stipend

not to exceed two thousand two hundred dollars (\$2,200) upon graduation from the program to defray costs for additional job training or education. Juvenile participants are authorized to receive uniforms and clothing items as determined by the staff to be appropriate for effective participation in outdoor activities.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

12-61-126. National Guard Youth Challenge Program — Transportation.

A.C.R.C. Notes. Acts 2012, No. 58, § 18, provided: “YOUTH CHALLENGE PROGRAM TRANSPORTATION. Transportation to support Arkansas National Guard Youth Challenge Program activities for juvenile participants and staff

may be provided by commercial lease/purchase of motor vehicles not to exceed six vehicles.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

12-61-128. Civilian Student Training Program — Transportation.

A.C.R.C. Notes. Acts 2012, No. 58, § 16, provided: “CIVILIAN STUDENT TRAINING PROGRAM TRANSPORTATION. Transportation to support Civilian Student Training program activities for juvenile participants and staff may be

provided by commercial lease/purchase of motor vehicles not to exceed six vehicles at Camp Joseph T. Robinson.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

TITLE 14**LOCAL GOVERNMENT*****SUBTITLE 2. COUNTY GOVERNMENT*****CHAPTER.****16. POWERS OF COUNTIES GENERALLY.**

SUBTITLE 2. COUNTY GOVERNMENT**CHAPTER 14****COUNTY GOVERNMENT CODE****SUBCHAPTER 8 — LEGISLATIVE POWERS****14-14-805. Powers denied.****RESEARCH REFERENCES**

ALR. Construction and Application of Constitutional Provisions Proscribing U.S. Const. Art. I, § 10, cl. 1, and State State Bills of Attainder. 63 A.L.R.6th 1.

SUBCHAPTER 11 — EXECUTIVE POWERS**14-14-1105. Jurisdiction of county court.****CASE NOTES****County Taxes.**

Arkansas Supreme Court lacked jurisdiction to consider the appeal from the circuit court, because the circuit court lacked jurisdiction to dismiss the complaint for failure to state a cause of action, when appellants' complaint challenged how the county was distributing the proceeds collected from the library tax, and

such a challenge to the distribution of the tax proceeds should have been raised in county court pursuant to Ark. Const. Art. 7, § 28 and subdivision (b)(1) of this section; it was undisputed that the case dealt with a county ad valorem tax. *Carnegie Pub. Library v. Carroll County*, 2012 Ark. 128, — S.W.3d — (2012).

CHAPTER 16**POWERS OF COUNTIES GENERALLY****SUBCHAPTER.****1. GENERAL PROVISIONS.****SUBCHAPTER 1 — GENERAL PROVISIONS****SECTION.**

14-16-106. Sale or disposal of surplus property.

14-16-105. Sale of county property generally.**CASE NOTES**

Cited: *Searcy County Counsel for Ethical Gov't v. Hinchey*, 2011 Ark. 533, — S.W.3d — (2011).

14-16-106. Sale or disposal of surplus property.

(a) If it is determined by the county judge to be surplus, any personal or real property owned by a county may be sold at public auction or by Internet sale to the highest bidder.

(b)(1) Notice of the public auction or Internet sale shall be published at least one (1) time a week for two (2) consecutive weeks in a newspaper having general circulation in the county.

(2) The notice shall specify the description of the property to be sold and the time and place of the public auction or Internet sale.

(3)(A) If the property will be sold by Internet sale, the notice of sale shall be placed on the website of the Internet vendor for no less than eight (8) consecutive days before the date of sale and shall contain a description of the property to be sold and the time of the sale.

(B) An additional notice may be posted on a county-owned or county-affiliated website, trade website, or business website for no less than eight (8) consecutive days before the date of sale.

(c)(1) If it is determined by the county judge and the county assessor that any personal property owned by a county is junk, scrap, discarded, or otherwise of no value to the county, then the property may be disposed of in any manner deemed appropriate by the county judge.

(2) However, the county judge shall report monthly to the quorum court any property that has been disposed of under subdivision (c)(1) of this section.

(d) The county fixed asset listing shall be amended to reflect all sales or disposal of county property made by the county under this section.

(e) If the sale is conducted on the Internet, the invoice from the Internet vendor or publisher shall be accompanied by a statement from the Internet vendor or publisher that the sale was published and conducted on the Internet.

(f)(1) When the sale is complete, the county court shall enter an order approving the sale.

(2) The order shall set forth:

(A) The description of the property sold;

(B) The name of the purchaser;

(C) The terms of the sale;

(D) That the proceeds of the sale have been deposited with the county treasurer; and

(E) The funds to which the proceeds were credited by the county treasurer.

History. Acts 1980 (1st Ex. Sess.), No. 41, § 1; 1980 (1st Ex. Sess.), No. 63, § 1; A.S.A. 1947, § 17-322; Acts 1997, No. 364, § 1; 2005, No. 725, § 1; 2011, No. 614, § 4; 2011, No. 1014, § 2.

Publisher's Notes. This section is be-

ing set out to correct an omission of (b)(3) from the 2011 supplement.

Amendments. The 2011 amendment inserted "or by Internet sale" in (a), (b)(1) and (2); and added (d).

CASE NOTES

Cited: Searcy County Counsel for Ethical Gov't v. Hinchey, 2011 Ark. 533, — S.W.3d — (2011).

CHAPTER 17
COUNTY PLANNING

SUBCHAPTER 2 — COUNTY PLANNING BOARDS

14-17-208. Subdivision, setback, and entry control ordinances.

CASE NOTES

Descriptions.

In a boundary dispute between adjoining property owners involving an alleged “spite” fence, a metes-and-bounds description of the property was not required where the survey that was part of the

record sufficiently identified the parties’ respective properties so that each party was capable of knowing where their boundary was. Jenkins v. Fogerty, 2011 Ark. App. 720, — S.W.3d — (2011).

SUBTITLE 3. MUNICIPAL GOVERNMENT

CHAPTER 40
ANNEXATION, CONSOLIDATION, AND DETACHMENT
BY MUNICIPALITIES

SUBCHAPTER 3 — MUNICIPAL ANNEXATION OF CONTIGUOUS LANDS

14-40-302. Authority — Exceptions.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Statutory Limitations Pe-

riods Governing Election Contests. 60 A.L.R.6th 481.

CASE NOTES

Time Limitation.

While the property owners argued that § 14-40-304 did not apply to claims under § 14-40-303, the law was otherwise. The 30-day limitations period set forth in

§ 14-40-304 extended to challenges to all procedures outlined in § 14-40-301 et seq., and not only to those enumerated in this section. Conrad v. City of Beebe, 2012 Ark. App. 15, — S.W.3d — (2012).

14-40-303. Annexation ordinance — Election — Procedures.**CASE NOTES****ANALYSIS**

Applicability.

Description of Lands.

Applicability.

Although the circuit court erred in finding that subdivision (f) of this section was applicable, because it governed the procedures for two cities that have called for annexation elections on all or part of the same land, the circuit court reached the right result in finding that 3360 acres annexed pursuant to an election 15 years earlier became a part of the city of West Memphis. *City of Marion v. City of W. Memphis*, 2012 Ark. 384, — S.W.3d — (2012).

Description of Lands.

Although the property owners argued that the circuit court erred in refusing to set aside the annexation of their property because the city failed to attach a map and legal description of the property proposed to be annexed in its newspaper publication in violation of subdivision (c)(1)(D) of this section, the language in this section required only that the city give notice of the election, which it did in the instant case. While publication of a map or legal description might have been helpful to the voters, the statute did not require the city to include either. *Conrad v. City of Beebe*, 2012 Ark. App. 15, — S.W.3d — (2012).

14-40-304. Judicial review.**RESEARCH REFERENCES**

ALR. Validity, Construction and Application of State Statutory Limitations Pe-

riods Governing Election Contests. 60 A.L.R.6th 481.

CASE NOTES**Time Limitation.**

While the property owners argued that this section did not apply to claims under § 14-40-303, the law was otherwise. The 30-day limitations period set forth in this

section extended to challenges to all procedures outlined in § 14-40-301 et seq., and not only to those enumerated in § 14-40-302. *Conrad v. City of Beebe*, 2012 Ark. App. 15, — S.W.3d — (2012).

SUBCHAPTER 6 — ANNEXATION PROCEEDINGS BY ADJOINING LANDOWNERS**14-40-601. Application by petition.****CASE NOTES****Notice.**

In an action challenging a petition for annexation of certain lands to the city, the circuit court entered an order finding that notice of the annexation was given in accordance with this section because the published notice accurately described the

real property to be annexed and more than fifty percent of the owners within the area to be annexed approved of the annexation. *Thompson v. City of Bauxite*, 2012 Ark. App. 580, — S.W.3d —, 2012 Ark. App. LEXIS 712 (Oct. 24, 2012).

14-40-604. Proceedings to prevent annexation.**CASE NOTES****Thirty-Day Period.**

Where the final order of the county court granting annexation was entered on December 4, 2007, appellants' complaint to challenge the annexation order should have been filed by January 4, 2008; however, the complaint was not filed until July 31, 2008. Because appellants filed

their complaint beyond the time allowed by subdivision (a)(1) of this section, the trial court's decision to dismiss the complaint was not erroneous. *Thompson v. City of Bauxite*, 2012 Ark. App. 580, — S.W.3d —, 2012 Ark. App. LEXIS 712 (Oct. 24, 2012).

14-40-608. Right to detach certain lands after an annexation proceeding.**CASE NOTES****Procedure.**

Land of landowners who failed to follow the procedures of this section to detach their land from the City of West Memphis prior to seeking annexation into the City of Marion remained part of West Mem-

phis. The West Memphis annexation of the land 15 years earlier was not void on the ground that the ballot included some land that was not annexed. *City of Marion v. City of W. Memphis*, 2012 Ark. 384, — S.W.3d — (2012).

SUBCHAPTER 20 — MUNICIPAL SERVICES**14-40-2002. Annexation into adjoining municipality.****CASE NOTES****Annexation.**

When annexed lands did not compose one area, under subdivision (b)(1) of this section, the annexations were not invalid because separate lands could be annexed at one time. *City of Rockport v. City of Malvern*, 2012 Ark. 445, — S.W.3d —, 2012 Ark. LEXIS 473 (Nov. 29, 2012).

Annexation of lands from a city to a municipality, at the request of the lands' owners, was not invalid due to being done by resolution, rather than ordinance because (1) this section clearly contemplated annexation by resolution, and (2) a reference in § 14-40-2004(c) to "ordinance" did not govern, as this section was the more

specific statute. *City of Rockport v. City of Malvern*, 2012 Ark. 445, — S.W.3d —, 2012 Ark. LEXIS 473 (Nov. 29, 2012).

Annexation of lands from a city to a municipality, at the request of the lands' owners, was not invalid when the city's streets separated annexed lands from the municipality, for lack of contiguity to the municipality, under subdivision (b)(1)(B) of this section, because a street did not break contiguity, since landowners held all rights to the land not inconsistent with public use of the street. *City of Rockport v. City of Malvern*, 2012 Ark. 445, — S.W.3d —, 2012 Ark. LEXIS 473 (Nov. 29, 2012).

14-40-2004. Hearing in circuit court — Appeal.**CASE NOTES****Annexation.**

Annexation of lands from a city to a municipality, at the request of the lands' owners, was not invalid due to being done by resolution, rather than ordinance because (1) § 14-40-2002 clearly contemplated annexation by resolution, and (2) a

reference in subsection (c) of this section to "ordinance" did not govern, as § 14-40-2002 was the more specific statute. *City of Rockport v. City of Malvern*, 2012 Ark. 445, — S.W.3d —, 2012 Ark. LEXIS 473 (Nov. 29, 2012).

CHAPTER 42**GOVERNMENT OF MUNICIPALITIES GENERALLY****SUBCHAPTER 2 — ELECTIONS****14-42-201. Election of municipal officers generally.****CASE NOTES****Residency Requirements.**

Where a mayor-elect owned a home outside of the city limits, but rented a residence within the city limits, the circuit court did not clearly err when it found that the state failed to meet its burden of proving that the mayor-elect did not reside within the city limits, as required under subdivision (c)(1) of this section. For the purposes of subsection (c)(1), the legislature intended for "reside" to mean live or be physically present. *State v. Jernigan*, 2011 Ark. 487, — S.W.3d — (2011).

In determining the residency of voters and public officials, the Supreme Court of Arkansas considers (1) whether a person is physically present in a particular location, or (2) whether a person intends to establish a domicile in a particular location. In other words, if a candidate is unable to establish residency by showing physical presence in the requisite location, the court allows a candidate to establish residency by showing domiciliary intent in the requisite location. *State v. Jernigan*, 2011 Ark. 487, — S.W.3d — (2011).

CHAPTER 54**POWERS OF MUNICIPALITIES GENERALLY****SUBCHAPTER 3 — REAL AND PERSONAL PROPERTY****14-54-302. Purchase, lease, and sale authorized.****CASE NOTES****Contracts Not Formally Authorized.**

In property owners' suit against a city, alleging the city failed to comply with the terms and conditions of an agreement between the parties for the location of a storm drainage easement upon the owners' property, the trial court erred in de-

nying the city's motion for a directed verdict because there was no evidence the city engineer had the authority to bind the city to a contract, pursuant to subdivision (a)(2) and subsection (c) of this section, to acquire an interest in the owners' property and obligate the city to perform

drainage construction on the property.
City of Bryant v. Collins, 2011 Ark. App.
713, — S.W.3d — (2011).

CHAPTER 55

ORDINANCES OF MUNICIPALITIES

SUBCHAPTER 2 — PROCEDURES FOR ADOPTION

14-55-202. Reading requirement.

CASE NOTES

Resolutions.

Annexation of lands from a city to a municipality, at the request of the lands' owners, was not invalid due to a failure to read the annexation resolutions on three different days or to publish the resolutions because (1) the resolutions were not gen-

eral, as the resolutions encompassed only annexed areas, and (2) the resolutions were not permanent, as the resolutions were terminable without repeal. City of Rockport v. City of Malvern, 2012 Ark. 445, — S.W.3d —, 2012 Ark. LEXIS 473 (Nov. 29, 2012).

14-55-206. Publishing or posting requirements.

CASE NOTES

Applicability.

Annexation of lands from a city to a municipality, at the request of the lands' owners, was not invalid due to a failure to read the annexation resolutions on three different days or to publish the resolutions because (1) the resolutions were not gen-

eral, as the resolutions encompassed only annexed areas, and (2) the resolutions were not permanent, as the resolutions were terminable without repeal. City of Rockport v. City of Malvern, 2012 Ark. 445, — S.W.3d —, 2012 Ark. LEXIS 473 (Nov. 29, 2012).

SUBTITLE 5. IMPROVEMENT DISTRICTS GENERALLY

CHAPTER 93

PROPERTY OWNERS' IMPROVEMENT DISTRICTS

14-93-105. Petition to form district.

CASE NOTES

Cited: Nat'l Bank of Ark. v. Panther Mt. Land Dev., LLC (In re Panther Mt. Land Dev., LLC), — F.3d —, 2012 U.S.

App. LEXIS 15319 (8th Cir. July 25, 2012).

14-93-106. Hearing on petition and determination.**CASE NOTES**

Cited: Nat'l Bank of Ark. v. Panther Mt. Land Dev., LLC (In re Panther Mt. Land Dev., LLC), — F.3d —, 2012 U.S. App. LEXIS 15319 (8th Cir. July 25, 2012).

14-93-107. Board of commissioners generally.**CASE NOTES**

Cited: Nat'l Bank of Ark. v. Panther Mt. Land Dev., LLC (In re Panther Mt. Land Dev., LLC), — F.3d —, 2012 U.S. App. LEXIS 15319 (8th Cir. July 25, 2012).

14-93-108. Removal of board members.**CASE NOTES**

Cited: Nat'l Bank of Ark. v. Panther Mt. Land Dev., LLC (In re Panther Mt. Land Dev., LLC), — F.3d —, 2012 U.S. App. LEXIS 15319 (8th Cir. July 25, 2012).

14-93-112. Corporate powers.**CASE NOTES**

Cited: Nat'l Bank of Ark. v. Panther Mt. Land Dev., LLC (In re Panther Mt. Land Dev., LLC), — F.3d —, 2012 U.S. App. LEXIS 15319 (8th Cir. July 25, 2012).

14-93-113. Right and power of eminent domain.**CASE NOTES**

Cited: Nat'l Bank of Ark. v. Panther Mt. Land Dev., LLC (In re Panther Mt. Land Dev., LLC), — F.3d —, 2012 U.S. App. LEXIS 15319 (8th Cir. July 25, 2012).

14-93-116. Assessment of benefits and damages.**CASE NOTES**

Cited: Nat'l Bank of Ark. v. Panther Mt. Land Dev., LLC (In re Panther Mt. Land Dev., LLC), — F.3d —, 2012 U.S. App. LEXIS 15319 (8th Cir. July 25, 2012).

14-93-117. Filing and notice of assessment — Hearing.

CASE NOTES

Cited: Nat'l Bank of Ark. v. Panther App. LEXIS 15319 (8th Cir. July 25,
Mt. Land Dev., LLC (In re Panther Mt. 2012).
Land Dev., LLC), — F.3d —, 2012 U.S.

14-93-119. Levy of tax.

CASE NOTES

Cited: Nat'l Bank of Ark. v. Panther App. LEXIS 15319 (8th Cir. July 25,
Mt. Land Dev., LLC (In re Panther Mt. 2012).
Land Dev., LLC), — F.3d —, 2012 U.S.

14-93-120. Interest on assessment.

CASE NOTES

Cited: Nat'l Bank of Ark. v. Panther App. LEXIS 15319 (8th Cir. July 25,
Mt. Land Dev., LLC (In re Panther Mt. 2012).
Land Dev., LLC), — F.3d —, 2012 U.S.

14-93-121. Extension and collection of taxes.

CASE NOTES

Cited: Nat'l Bank of Ark. v. Panther App. LEXIS 15319 (8th Cir. July 25,
Mt. Land Dev., LLC (In re Panther Mt. 2012).
Land Dev., LLC), — F.3d —, 2012 U.S.

14-93-122. Subsequent levies.

CASE NOTES

Cited: Nat'l Bank of Ark. v. Panther App. LEXIS 15319 (8th Cir. July 25,
Mt. Land Dev., LLC (In re Panther Mt. 2012).
Land Dev., LLC), — F.3d —, 2012 U.S.

14-93-127. Dissolution of district.

CASE NOTES

Cited: Nat'l Bank of Ark. v. Panther App. LEXIS 15319 (8th Cir. July 25,
Mt. Land Dev., LLC (In re Panther Mt. 2012).
Land Dev., LLC), — F.3d —, 2012 U.S.

***SUBTITLE 14. SOLID WASTE DISPOSAL, WATERWORKS,
AND SEWERS GENERALLY***

CHAPTER 235

MUNICIPAL SEWAGE SYSTEMS

SUBCHAPTER 2 — OPERATION OF SYSTEMS BY MUNICIPALITIES

14-235-201. Definition.

CASE NOTES

Sewerage System.

Stormwater utility fee was not an illegal extraction because § 14-235-223(a)(1) did not state that the fee had to be paid by any beneficiary, whether intended or unintended, of the sewerage system, and the

code did not define “sewerage system” to distinguish between the wastewater sewer system and the stormwater sewer system. *Morningstar v. Bush*, 2011 Ark. 350, 383 S.W.3d 840 (2011).

14-235-203. Authority generally.

CASE NOTES

Illegal Exaction.

Stormwater utility fee was not an illegal exaction because § 14-235-223(a)(1) did not state that the fee had to be paid by any beneficiary, whether intended or unintended, of the sewerage system, and the

code did not define “sewerage system” to distinguish between the wastewater sewer system and the stormwater sewer system. *Morningstar v. Bush*, 2011 Ark. 350, 383 S.W.3d 840 (2011).

14-235-223. Rates and charges for services — Lien.

CASE NOTES

Illegal Extraction.

Stormwater utility fee was not an illegal extraction because subdivision (a)(1) of this section did not state that the fee had to be paid by any beneficiary, whether intended or unintended, of the sewerage

system, and the code did not define “sewerage system” to distinguish between the wastewater sewer system and the stormwater sewer system. *Morningstar v. Bush*, 2011 Ark. 350, 383 S.W.3d 840 (2011).

***SUBTITLE 16. PUBLIC HEALTH AND WELFARE
GENERALLY***

CHAPTER 266

MUNICIPAL AMBULANCE LICENSING

14-266-105. Grant of authority.

CASE NOTES

Cited: City of Clinton v. Southern
Paramedic Servs., 2012 Ark. 88, — S.W.3d
— (2012).

CHAPTER 269

PARKS AND RECREATIONAL FACILITIES

**SUBCHAPTER 1 — ACQUISITION, CONSTRUCTION, AND MAINTENANCE OF
RECREATIONAL FACILITIES**

**14-269-103. General authority — Agreements with federal agen-
cies — Condemnation proceedings.**

CASE NOTES

Appeal.

In an eminent domain case in which an order of immediate possession was granted, because the issue of just compensation remained to be determined, the order granting immediate possession was

not a final, appealable order. The construction of a bicycle trail would not render it impossible to restore his property to its previous condition. Thomas v. City of Fayetteville, 2012 Ark. 120 (2012).

***SUBTITLE 17. PUBLIC HEALTH AND WELFARE
IMPROVEMENT DISTRICTS***

CHAPTER 284

FIRE PROTECTION DISTRICTS

SUBCHAPTER 4 — INSURANCE PREMIUM TAXES

14-284-403. Apportionment of funds.

A.C.R.C. Notes. Acts 2012, No. 281, § 79, provided: “FUNDING — GRANTS TO FIRE DEPARTMENTS. ” After funds collected pursuant to §26-57-614 are distributed in accordance with §14-284-403, any remaining balance of authorized

funding for grants to fire departments for Crittenden County during the 2010-2011 fiscal year in the amount of one hundred fifty-three thousand nine hundred and forty-eight dollars (\$153,948) or above, shall be distributed as follows:

“(a) eight and three tenths percent (8.3%) shall be distributed to the Anthonyville Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(b) eight and three tenths percent (8.3%) shall be distributed to the Crawfordsville Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(c) eight and three tenths percent (8.3%) shall be distributed to the Earle Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(d) eight and three tenths percent (8.3%) shall be distributed to the Edmondson Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(e) eight and three tenths percent (8.3%) shall be distributed to the Heafer Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(f) eight and three tenths percent (8.3%) shall be distributed to the Horse-shoe Lake Fire Department, up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(g) eight and three tenths percent (8.3%) shall be distributed to the Jericho

Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(h) eight and three tenths percent (8.3%) shall be distributed to the Marion Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(i) eight and three tenths percent (8.3%) shall be distributed to the Proctor Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(j) eight and three tenths percent (8.3%) shall be distributed to the West Memphis Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(k) eight and three tenths percent (8.3%) shall be distributed to the Clarke-dale Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829), and

“(l) eight and three tenths percent (8.3%) shall be distributed to the Turrell Fire Department up to a maximum of twelve thousand eight hundred and twenty-nine dollars (\$12,829).

“Any balances remaining for Crittenden County following the distribution in subsections (a) through (l) of this Section, shall be distributed to active fire departments based on population.”

SUBTITLE 22. AIRPORT FACILITIES GENERALLY

CHAPTER 362

REGIONAL AIRPORTS

SUBCHAPTER 1 — GENERAL PROVISIONS

14-362-120. Acquisition of property.

CASE NOTES

Attorney's Fees.

Trial court erred in awarding attorney's fees to a lessee in an airport eminent domain proceeding brought under this section because § 18-15-605(b) applied

only to municipal corporations and other corporations that supplied water to cities, towns, or rural areas. Delta Reg'l Airport Auth. v. Gunn, 2011 Ark. App. 701, — S.W.3d — (2011).

TITLE 15

**NATURAL RESOURCES AND ECONOMIC
DEVELOPMENT**

*SUBTITLE 1. DEVELOPMENT OF ECONOMIC AND NATURAL RESOURCES
GENERALLY*

CHAPTER.

4. DEVELOPMENT OF BUSINESS AND INDUSTRY GENERALLY.

**SUBTITLE 1. DEVELOPMENT OF ECONOMIC AND
NATURAL RESOURCES GENERALLY**

CHAPTER 4

**DEVELOPMENT OF BUSINESS AND INDUSTRY
GENERALLY**

SUBCHAPTER.

32. ARKANSAS AMENDMENT 82 IMPLEMENTATION ACT.

SUBCHAPTER 2 — ARKANSAS ECONOMIC DEVELOPMENT COUNCIL

15-4-211. Overseas program — Personnel.

A.C.R.C. Notes. Acts 2012, No. 248, § 17, provided: “FOREIGN OFFICE OPERATIONS. The Arkansas Economic Development Commission is hereby authorized to enter into contractual arrangements with private and/or public companies, corporations, individuals or organizations for the purpose of operating foreign offices. Arkansas Code 15-4-211 shall not be deemed restrictive in its language so as to preclude the use of standard Professional Services Contracts for the operation of the foreign offices and/or payment of such contracts from the special line items as established by legislative appropriation for the operation of said foreign offices.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 248, § 18, provided: “MULTI-USE FACILITIES. The Arkansas Economic Development Commission (AEDC) shall structure its annual update to the Five Year Consolidated Plan and the new Five Year Consolidated Plan to reflect the legislative intent for a priority to be placed on the use of Community Development Block Grant (CDBG) funds for Multi-use facilities that will offer combined facilities for programs commonly offered in separate facilities such as senior centers, public health centers, childcare centers and community centers. AEDC shall report the methodology for complying with this priority to the Legislative Council.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 32 — ARKANSAS AMENDMENT 82 IMPLEMENTATION ACT

SECTION.

15-4-3203. Amendment 82 project qualification.

15-4-3203. Amendment 82 project qualification.

(a)(1)(A) In exercising its responsibilities under Arkansas Constitution, Amendment 82, the General Assembly delegates, authorizes, and directs the Arkansas Economic Development Commission, the Arkansas Development Finance Authority, and the Chief Fiscal Officer of the State to undertake a review of all proposed projects following the procedures described in this section.

(B) In order to be considered for qualification, a sponsor must fall within the definition of an “eligible business”, as defined in § 15-4-2703.

(2) If the Governor refers a proposed project to the General Assembly under subsection (h) of this section, the commission and the authority shall prepare and provide to each member of the General Assembly the reports described in subsection (i) of this section, after which the General Assembly shall make the final and definitive decisions concerning the proposed project as set forth in subsection (j) of this section.

(b)(1) As the lead economic development agency for the State of Arkansas, the Arkansas Economic Development Commission may propose the use of Amendment 82 bonds to finance infrastructure and other needs in any combination in order to attract proposed projects to the State of Arkansas.

(2) In addition to powers conferred under other laws, the commission may take any reasonable action necessary to carry out the purposes of Arkansas Constitution, Amendment 82, and this subchapter.

(3) The proposed use of Amendment 82 financing by the commission shall not prohibit the commission, the state, or any local entity from using any other available economic incentives in connection with a proposed project.

(c) The commission shall initiate the process of selecting a proposed project for referral to the General Assembly by performing an economic impact and cost-benefit analysis to evaluate the capability of a sponsor and the feasibility of a proposed project and to determine if the proposed project has the potential to be a qualified Amendment 82 project. The economic impact and cost-benefit analysis shall include all other economic incentives offered by the state in connection with the proposed project.

(d) If the commission determines that a proposed project has the potential to become a qualified Amendment 82 project, the commission shall refer the proposal and the commission’s findings to the authority so that the authority may perform an initial assessment of the feasibility and impact of issuing Amendment 82 bonds in connection with the proposed project, including the state’s ability to cover projected debt service obligations and the impact on the overall rating of the state’s general obligation bonded indebtedness, including, without limitation, bonds issued under Arkansas Constitution, Amendment 82, and this subchapter.

(e) If the authority’s initial assessment is that Amendment 82 bond financing for the proposed project is feasible, the authority shall notify

the department, and the department shall refer the proposal and the findings of the department and the authority to the Chief Fiscal Officer of the State for review of the impact of the proposed Amendment 82 bond financing on any agency or program supported from the gross general revenues under the Revenue Stabilization Law, § 19-5-101 et seq.

(f) If the Chief Fiscal Officer of the State's initial assessment is that the proposed Amendment 82 financing will not have a substantially negative impact on any agency or program supported from gross general revenues, then:

(1) The Chief Fiscal Officer of the State shall notify the commission; and

(2) The commission shall make a formal proposal to the sponsor detailing the state's proposed offer with respect to Amendment 82 financing and all other economic incentives offered by the state in connection with the proposed project.

(g)(1) If the sponsor of a proposed project determines to accept Amendment 82 financing, then the sponsor and the commission, on behalf of the state, shall sign a letter of commitment.

(2) The commission shall forward the letter of commitment and the findings and recommendations of the commission, the authority, and the Chief Fiscal Officer of the State to the Governor for review.

(3)(A) The commission shall also forward the letter of commitment, the findings and recommendations of the the department, the authority, and the Chief Fiscal Officer of the State, and all supporting documentation to the Office of Economic and Tax Policy of the Bureau of Legislative Research on behalf of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(B)(i) At the direction of the President Pro Tempore of the Senate or the Speaker of the House of Representatives, the office shall arrange for an independent confirmation of the economic impact and cost-benefit analysis performed by the commission or an independent economic impact and cost-benefit analysis of the proposed project to be completed within twenty (20) working days after the receipt of the letter of commitment.

(ii) All information forwarded to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by the commission and any resulting information related to the confirmation of the commission's economic impact and cost-benefit analysis or independent economic impact and cost-benefit analysis:

(a) Shall be considered working papers of the President Pro Tempore of the Senate and the Speaker of the House of Representatives under § 25-19-105(b)(7) and shall not be open to inspection and copying by any citizen of the State of Arkansas; and

(b) Is specifically exempt from the requirements of § 25-19-105(a).

(h) If the Governor determines that it is in the best interest of the state to pursue Amendment 82 financing for the proposed project, the Governor shall refer the proposed project to the General Assembly in

regular session, fiscal session, or special session in order for the General Assembly to consider whether to approve the issuance of bonds under Arkansas Constitution, Amendment 82, and this subchapter.

(i)(1) In order to expedite review by the General Assembly, the commission and the authority shall prepare and provide to each member of the General Assembly the reports described in subdivisions (i)(2) and (3) of this section.

(2) The commission's report shall include:

(A) A description of the proposed project;

(B)(i) An itemization of the proposed infrastructure needs and other needs to be financed with the proceeds derived from the sale of Amendment 82 bonds.

(ii) The itemization shall include estimated costs and details to the maximum extent available at the time of the report;

(C) A description of all other economic incentives to be provided by the state in connection with the proposed project;

(D) A description of the economic impact and cost-benefit analyses of the proposed project for a period of at least ten (10) years that includes:

(i) The annual projected benefit to the state from increased sales and use tax and income tax revenue;

(ii) The annual projected cost to the state for each economic incentive offered to the sponsor in connection with the proposed project; and

(iii) The overall net present value benefit-to-cost ratio for the period of at least ten (10) years;

(E) The amount of bonds necessary to be issued to defray project costs and a budget of the project costs;

(F) A tentative time schedule setting forth the period of time during which the proceeds of the Amendment 82 bonds are to be expended;

(G) A statement by the Director of the Arkansas Economic Development Commission based on and outlining the:

(i) Terms of the letter of the commitment;

(ii) Estimated dollar amount of investment in the state from the proposed project; and

(iii) Estimated number of new jobs to be created by the proposed project;

(H) A copy of the signed letter of commitment for the proposed project; and

(I) A copy of the unexecuted Amendment 82 agreement for the proposed project.

(3) The authority's report shall include:

(A) A schedule of projected debt service, including all fees, showing the annual principal and interest requirements for any Amendment 82 bonds outstanding, if applicable, and the projected debt service for the Amendment 82 bonds proposed to be issued for the proposed project;

(B) A projected schedule of revenues, if any, to be received by the state from the sponsor in connection with its use of the infrastructure needs and other needs associated with the proposed project;

(C) An initial plan of marketing for the bonds and a proposed schedule of issuance dates, including, without limitation, the number of series to be issued and an estimated timeline for the series based on the commission's proposed spending schedule; and

(D) A preliminary and estimated sources and uses table.

(j) If the General Assembly determines that the proposed project is of the nature intended by the electors of the state to be financed with Amendment 82 bonds and approves the Amendment 82 agreement, it shall take appropriate legislative action to:

(1) Declare the proposed project a qualified Amendment 82 project;

(2) Establish any additional parameters deemed necessary by the General Assembly for the general structure of the qualified Amendment 82 project, including, without limitation, penalty provisions;

(3) Authorize the execution of the Amendment 82 agreement in substantially the same form as presented to the General Assembly; and

(4) Authorize the issuance of Amendment 82 bonds.

History. Acts 2005, No. 1981, § 1; 2009, No. 962, § 31; 2011, No. 1047, §§ 3, 4.

Publisher's Notes. This section is being set out to reflect a reference correction in (b)(1).

CHAPTER 6

ARKANSAS RURAL DEVELOPMENT PROGRAM ACT

15-6-106. Arkansas Rural Development Commission — Department of Rural Services — Functions, powers, and duties.

A.C.R.C. Notes. Acts 2012, No. 248, § 21, provided: "GRANT REVIEW. The Arkansas Economic Development Commission (AEDC) shall review all applications for grant funds from the Rural Development Set-Aside and shall certify to the Department of Rural Services those applications eligible for grant funds under AEDC and federal guidelines. The Department of Rural Services alone shall decide which grant applications will be funded, and AEDC shall disburse grant funds from the Rural Development Set-

Aside to those applicants receiving final approval by the Department of Rural Services. AEDC and the Department of Rural Services shall promulgate rules and regulations governing the application for and disbursement of grant funds from the Rural Development Set-Aside, and an annual report of the disposition of these grant funds shall be made to the Legislative Joint Auditing Committee.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

15-6-107. Assistance programs and grants.

A.C.R.C. Notes. Acts 2012, No. 103, § 7, provided: "GENERAL IMPROVEMENT PROJECTS ADMINISTRATIVE FEE. The Department of Rural Services is

authorized to retain and utilize for administrative cost purposes up to one percent (1%) of the total amount of any General Improvement Fund moneys received for

projects authorized for disbursement through the department by the General Assembly.”

Acts 2012, No. 103, § 8, provided: “FUND TRANSFER. Upon request of the Director of the Department of Rural Services to the Chief Fiscal Officer of the State, the Chief Fiscal Officer of the State, from time to time, shall cause to be transferred on his books and those of the State Treasurer and Auditor of State, an amount not to exceed one percent (1%) from the various sub funds created in any General Improvement Fund, established for disbursement through the Department of Rural Services, to the Miscellaneous Agencies Fund Account.

“The funds transferred to the Miscellaneous Agencies Fund Account from the various sub funds established in any General Improvement Fund pursuant to this section shall be made available and utilized solely by the Department of Rural Services for maintenance and general operations costs.”

Acts 2012, No. 103, § 9, provided: “ADMINISTRATIVE EXPENSES. Any unexpended balance of funds remaining on June 30, of each fiscal year in the Miscellaneous Agencies Fund Account for the Department of Rural Services that were transferred from the various sub funds created in any General Improvement Fund for the administration of general improvement fund projects shall remain in the Miscellaneous Agencies Fund Account and made available to the Department of Rural Services and utilized for the same purpose during the following fiscal year.”

Acts 2012, No. 103, § 10, provided: “COUNTY FAIR GRANTS. The Department of Rural Services shall develop the necessary rules and regulations for the disbursement of matching fund grants to county fairs for the construction, renovation and/or improvements to county fair

grounds. The grants shall be matched on a 50/50 basis. The match may be cash or in-kind. No county fair shall receive more than \$30,000 for the biennium.”

Acts 2012, No. 103, § 11, provided: “GRANT AWARD CRITERIA. The Department of Rural Services shall promulgate regulations establishing the criteria to be utilized in determining to whom grants will be made under this Act. Subject to the approval of the Governor, and approval by the Arkansas Legislative Council or the Joint Budget Committee, the Department of Rural Services shall distribute the grants.

“Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Rural Services may operate more efficiently if some flexibility is provided to the Department of Rural Services authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBTITLE 2. LAND AND WATER RESOURCES GENERALLY

CHAPTER 20 GENERAL PROVISIONS

SUBCHAPTER 2 — ARKANSAS NATURAL RESOURCES COMMISSION

A.C.R.C. Notes. Acts 2012, No. 166, §§ 21-23, provided: "SECTION 21. TRANSFER PROVISION. At the end of each fiscal year, the Chief Fiscal Officer of the State shall authorize the transfer of obligated water, sewer, and solid waste funds, as provided in the appropriation act for the Natural Resources Commission in the appropriation entitled 'Water, Sewer and Solid Waste — State', from the Miscellaneous Agencies Fund Account, to the Water, Sewer and Solid Waste Revolving Fund.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.

"SECTION 22. CARRY FORWARD. At the end of each fiscal year, the Chief Fiscal Officer of the State shall authorize the carry forward of funds to support the amount of obligated grants that are certified by the Natural Resources Commission for Matching Grants in the appropriation entitled 'Water Quality Plan Implementation'.

"Any carry forward of unexpended balance of funding as authorized herein, may be carried forward under the following conditions:

"(1) Prior to June 30, 2013 the Agency shall by written statement set forth its reason(s) for the need to carry forward said funding to the Department of Finance and Administration Office of Budget;

"(2) The Department of Finance and Administration Office of Budget shall report to the Arkansas Legislative Council all amounts carried forward by the September Arkansas Legislative Council or Joint Budget Committee meeting which report shall include the name of the Agency, Board, Commission or Institution and the amount of the funding carried forward from the first fiscal year to the second fiscal year, the program name or line item, the funding source of that ap-

propriation and a copy of the written request set forth in (1) above;

"(3) Each Agency, Board, Commission or Institution shall provide a written report to the Arkansas Legislative Council or Joint Budget Committee containing all information set forth in item (2) above, along with a written statement as to the current status of the project, contract, purpose etc. for which the carry forward was originally requested no later than thirty (30) days prior to the time the Agency, Board, Commission or Institution presents its budget request to the Arkansas Legislative Council/Joint Budget Committee; and

"(4) Thereupon, the Department of Finance and Administration shall include all information obtained in item (3) above in the budget manuals and/or a statement of non-compliance by the Agency, Board, Commission or Institution.

"SECTION 23. CARRY FORWARD. At the end of the fiscal year, the Chief Fiscal Officer of the State shall authorize the carry forward of funds to support the amount of obligated grants that are certified by the Natural Resources Commission for Water Quality Technicians in the appropriation entitled 'Water Quality Plan Implementation'.

"Any carry forward of unexpended balance of funding as authorized herein, may be carried forward under the following conditions:

"(1) Prior to June 30, 2013 the Agency shall by written statement set forth its reason(s) for the need to carry forward said funding to the Department of Finance and Administration Office of Budget;

"(2) The Department of Finance and Administration Office of Budget shall report to the Arkansas Legislative Council all amounts carried forward by the September Arkansas Legislative Council or Joint Budget Committee meeting which

report shall include the name of the Agency, Board, Commission or Institution and the amount of the funding carried forward from the first fiscal year to the second fiscal year, the program name or line item, the funding source of that appropriation and a copy of the written request set forth in (1) above;

“(3) Each Agency, Board, Commission or Institution shall provide a written report to the Arkansas Legislative Council or Joint Budget Committee containing all information set forth in item (2) above, along with a written statement as to the

current status of the project, contract, purpose etc. for which the carry forward was originally requested no later than thirty (30) days prior to the time the Agency, Board, Commission or Institution presents its budget request to the Arkansas Legislative Council/Joint Budget Committee; and

“(4) Thereupon, the Department of Finance and Administration shall include all information obtained in item (3) above in the budget manuals and/or a statement of non-compliance by the Agency, Board, Commission or Institution.”

SUBTITLE 3. FOREST RESOURCES

CHAPTER 31

ARKANSAS FORESTRY COMMISSION

SUBCHAPTER 1 — GENERAL PROVISIONS

15-31-106. Functions, powers, and duties.

A.C.R.C. Notes. Acts 2012, No. 252, § 48, provides: “REFUND TO EXPENDITURE. The Arkansas Forestry Commission is authorized to charge fees to federal agencies and other states to reimburse the Commission for expenditures made on behalf of these governmental units. These fees shall be deposited into the State Forestry Fund in the State Treasury as a refund to expenditure.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 252, § 50, provides: “REPORTING REQUIREMENTS. The Arkansas Forestry Commission shall present the following data each month to the Chief Fiscal Officer of the State and the Arkansas Legislative Council or Joint Budget Committee. This report shall be due by the 10th day of the month following the reporting period. The first reporting period shall be July 2012.

“a) All fund transfers completed by the Arkansas Forestry Commission from any funding source including federal funds, and shall include a justification for the completion of the fund transfers.

“b) All expenditures incurred by the Arkansas Forestry Commission from any funding source including federal funds, and shall include a justification for the expenditure of the funds.

“c) All revenue receipts of the Arkansas Forestry Commission including but not limited to federal funds, general revenue, severance tax, acreage tax, timber sales and seedlings sales.

“d) All Arkansas Forestry Commission activities including but not limited to, firefighting activities, fire prevention, and emergency response as it relates to the Commission’s statutory mission provided in Arkansas Code 15-31-101.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBTITLE 4. WILDLIFE RESOURCES

CHAPTER 41

ADMINISTRATION AND ENFORCEMENT OF WILDLIFE REGULATIONS

SUBCHAPTER 1 — ARKANSAS STATE GAME AND FISH COMMISSION

15-41-115. Rewards.

A.C.R.C. Notes. Acts 2012, No. 270, § 7, provided: "PAYMENT OF REWARDS. Payment of rewards shall be from the Game Protection Fund from the Commission's Maintenance and General

Operation appropriation as herein appropriated in Section 3, Item No. (05)(A).

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBTITLE 6. OIL, GAS, AND BRINE

CHAPTER 71

OIL AND GAS COMMISSION

A.C.R.C. Notes. Acts 2012, No. 272, § 7, provided: "FAYETTEVILLE SHALE QUARTERLY REPORTING. The Arkansas Oil and Gas Commission shall report on a quarterly basis to the Arkansas Legislative Council or the Joint Budget Committee the number of inspections and any hearings, findings, orders, fines, or other agency regulatory or enforcement actions

or activities involving the Fayetteville Shale. The quarterly reports shall be provided no later than the 15th day of the month immediately following the end of each quarter.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

15-71-111. Procedural rules, regulations, or orders — Hearing.

CASE NOTES

Failure to Comply with Rules.

Issuance of a commercial disposal well permit was made upon unlawful procedure and was thus subject to reversal under § 25-15-212(h)(3) because the Arkansas Oil and Gas Commission failed to comply with its own rules pursuant to

subdivision (a)(3) of this section when it did not require timely proof of financial assurance under Ark. Oil & Gas Comm'n Rule H-1. Capstone Oilfield Disposal of Ark., Inc. v. Pope County, 2012 Ark. App. 231, — S.W.3d — (2012).

15-71-115. Abandoned and Orphaned Well Plugging Fund.

A.C.R.C. Notes. Acts 2012, No. 272, § 6, provided: "FUND TRANSFER. The Oil and Gas Commission, after receiving review from the Chief Fiscal Officer of the

State and the Legislative Council, may request the Chief Fiscal Officer to transfer up to \$750,000 per year on his or her books and the books of the State Trea-

suror and the Auditor of the State from the Oil and Gas Commission Fund to the Abandoned and Orphaned Well Plugging Fund.”

CHAPTER 72

OIL AND GAS PRODUCTION AND CONSERVATION

SUBCHAPTER 3 — POOLS AND DRILLING UNITS

15-72-304. Integration orders generally.

CASE NOTES

Reasonable Compensation.

Neither subdivision (b)(4) of this section nor any administrative rule required the Arkansas Oil & Gas Commission to award as compensation for the forced integration, or pooling, of mineral interests in a natural-gas drilling unit the highest price contracted for within the drilling unit. As set forth in the statute, the more flexible standard of reasonableness applies. *Walls v. Ark. Oil & Gas Comm’n*, 2012 Ark. App. 110, — S.W.3d — (2012).

This section does not require the Arkansas Oil and Gas Commission to award the highest bonus historically paid when unleased mineral owners are directed to transfer their rights in a drilling unit and the product from the unit well to the parties who elect to participate therein; it requires only reasonable consideration

and a reasonable basis. *Walls v. Ark. Oil & Gas Comm’n*, 2012 Ark. 418, — S.W.3d —, 2012 Ark. LEXIS 439 (Nov. 8, 2012).

Decision of the Arkansas Oil and Gas Commission that the owners’ compensation be at a rate of \$ 500 per net mineral acre and a one-eighth royalty was supported by substantial evidence as: (1) this section did not require the Commission to award the highest bonus historically paid; (2) this section required only reasonable consideration and a reasonable basis; and (3) there was evidence that the corporation had about 265 acres under lease and that the best terms paid were \$ 800 and a one-sixth royalty, \$ 500 and a one-eighth royalty, and \$ 225 and a three-sixteenths royalty. *Walls v. Ark. Oil & Gas Comm’n*, 2012 Ark. 418, — S.W.3d —, 2012 Ark. LEXIS 439 (Nov. 8, 2012).

TITLE 16

PRACTICE, PROCEDURE, AND COURTS

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY

CHAPTER.

90. JUDGMENT AND SENTENCE GENERALLY.

SUBTITLE 1. GENERAL PROVISIONS**CHAPTER 4****UNIFORM INTERSTATE AND INTERNATIONAL
PROCEDURE ACT****16-4-101. Personal jurisdiction of Arkansas courts.****CASE NOTES****ANALYSIS****Contacts Not Found.****Due Process.**

—Contacts Not Found.
Foreign Company.

Contacts Not Found.

Motion to dismiss was granted because although plaintiff argued that general personal jurisdiction was satisfied because auto parts manufactured by defendants were ultimately included in cars sold extensively in the state, this “stream of commerce” argument was not an adequate basis for the exercise of general jurisdiction. *P.A.M. Transp., Inc. v. Faurecia Auto. Seating, Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 124189 (W.D. Ark. Oct. 26, 2011).

Due Process.

Based upon the allegations in the complaint and the employee’s affidavit that his only contacts with Arkansas were by telephone and correspondence, the employee’s contacts with Arkansas were insufficient to establish minimum contacts so as to justify exercise of personal jurisdiction. *U.S. Bank N.A. ND v. Elender Escrow, Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 134690 (E.D. Ark. Nov. 21, 2011).

Co-conspirators’ contacts with Arkansas were insufficient to establish the requisite minimum contacts to justify exercise of personal jurisdiction over them or conspiracy jurisdiction over their co-conspirators. Conspiracy jurisdiction only applied when at least one of the conspirators had minimum contacts with Arkansas in furtherance of the conspiracy and such contacts had not been pled. *U.S. Bank N.A. ND v. Elender Escrow, Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 134690 (E.D. Ark. Nov. 21, 2011).

Personal jurisdiction based on the conspiracy theory did not violate due process. As such, the use of the conspiracy theory of in personam jurisdiction does not violate this section, Arkansas’s long arm statute. *Gibbs v. Primelending*, 2011 Ark. 255, — S.W.3d — (2011).

Court properly exercised personal jurisdiction over the judgment debtors, because the complaint arose out of and was directly related to the 2003 judgments, which were entered in Arkansas and remain unsatisfied; the debtors entered into or guaranteed several loan contracts with an Arkansas bank and pledged Arkansas real estate as collateral, and the debtors defaulted on the loans and an Arkansas court entered judgments against them. *Hauser v. Sims*, 2012 Ark. App. 295, — S.W.3d — (2012).

—Contacts Not Found.

District court did not have personal jurisdiction over defendants, an Iowa citizen and limited liability company, because the only contact with Arkansas was a single meeting by the parties in Arkansas; because defendants’ trip to Arkansas (and their failure to obtain permission to use plaintiff’s mark) did not cause or otherwise precipitate the alleged infringement, and nothing in the record showed any other connection to Arkansas, the contact with Arkansas was insufficient to permit the exercise of personal jurisdiction consistent with the Due Process Clause. *Pan-gaea, Inc. v. Flying Burrito LLC*, 647 F.3d 741 (8th Cir. 2011).

Foreign Company.

Arkansas did not have general jurisdiction over a Japanese manufacturer pursuant to subdivision (B) of this section in a wrongful-death suit arising from a tractor accident because the manufacturer was

not itself doing business in Arkansas and did not dominate and control its American subsidiary, which sold tractors in Arkansas through authorized dealers, such that

personal jurisdiction could be predicated on an alter ego relationship. *Yanmar Co., Ltd. v. Slater*, 2012 Ark. 36, — S.W.3d — (2012).

SUBTITLE 2. COURTS AND COURT OFFICERS

CHAPTER 10

GENERAL PROVISIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

16-10-108. Contempt.

CASE NOTES

ANALYSIS

Actions Constituting Contempt.
—Disobeying Order.

Actions Constituting Contempt.

—Disobeying Order.

In a criminal contempt case under subdivision (a)(3) of this section, substantial

evidence supported the trial court's determination that defendant willfully violated the court's orders requiring her to make restitution payments because defendant testified that she received a monthly disability check in the amount of \$633 but did not use the money to make restitution payments. *Summers v. State*, 2012 Ark. App. 247, — S.W.3d — (2012).

16-10-110. Seals.

CASE NOTES

Cited: *Unimeks, LLC v. Purolite*, 2012 Ark. 20, — S.W.3d — (2012).

16-10-133. Trial court staff.

A.C.R.C. Notes. Acts 2012, No. 245, § 3, provided: "RATE OF PAY. The entry level salary of a trial court staff person shall be equal to that established in the state pay plan at grade C117."

Acts 2012, No. 245, § 4, provided: "CERTIFICATION. Any Trial Court Administrative Assistant who is or becomes certified by the National Center for State

Courts as a certified Court Manager shall be entitled to have the annual salary for which he or she is eligible to be increased by ten percent (10%), which shall not exceed the maximum amount for the grade assigned.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 3 — UNIFORM FILING FEES AND COURT COSTS

16-10-312. Distribution of State Administration of Justice Fund.

A.C.R.C. Notes. Acts 2012, No. 281, § 59, provided: "DISTRIBUTION OF ADMINISTRATION OF JUSTICE FUNDS.

In the event that the fund balance in the Administration of Justice Fund is inadequate to fund the monthly allocation to

State Agencies, the funds will be distributed as follows:

“All monthly allocations to State Agencies will be funded in the percentage of the total funds available in the Administration of Justice Fund; that is if less than 100% of the total monthly allocation is available for distribution, all monthly allocations to State Agencies will be funded at an equal percentage consistent with the available funds, provided that any of the

allocations listed in Section 60 that have been fully pledged prior to January 1, 2001 to the repayment of a bond issue or bond issues shall not be reduced below the amount listed in Section 60. Any shortage from one month will be adjusted in future months’ payments as funds become available.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 11

SUPREME COURT

SUBCHAPTER 1 — GENERAL PROVISIONS

16-11-106. Issuance of writs and process.

CASE NOTES

Attorney General.

On appeal of the order granting a permanent guardianship of appellant’s son to his grandmother, the Supreme Court of Arkansas did not address the merits of appellant’s constitutional challenge to the guardianship statutes, §§ 28-65-101 to

28-65-707, because the attorney general was not notified of the challenge as required by subsection (b) of this section and there had not been a complete adversarial development of the constitutional issues. *Mahavier v. Mahavier* (In re A.M.), 2012 Ark. 278, — S.W.3d — (2012).

SUBCHAPTER 3 — PROCEDURAL RULES

16-11-301. Rules of pleading, practice, and procedure — Supersession.

CASE NOTES

Application.

Petition to revive a foreign judgment was properly granted because it was authenticated under Ark. R. Civ. P. 44 where it was signed by a clerk for a United States Bankruptcy Court; the Arkansas Supreme Court’s rule-making authority

over procedural matters was exclusive. It was argued that the proper authentication process was not followed when a certified copy of the judgment was attached to an application. *Bird v. Shaffer*, 2012 Ark. App. 464, — S.W.3d — (2012).

CHAPTER 13

CIRCUIT COURTS

SUBCHAPTER 5 — COURT REPORTERS

A.C.R.C. Notes. Acts 2012, No. 110, § 3, provided: “TRANSCRIPTS. Official

Court Reporters shall prepare transcripts, which are to be included within a record

on appeal, pursuant to the time requirements that are outlined in the Arkansas Supreme Court Rules. In the event an official Court Reporter fails to complete a transcript within the prescribed time, he or she shall immediately inform the judge, for whom he or she is employed, and the Arkansas Board of Certified Court Re-

porter Examiners. Failure of a Court Reporter to report to his or her judge and to the Arkansas Board of Certified Court Reporter Examiners shall result in the immediate suspension of the Court Reporter's license, pending a hearing before the Arkansas Board of Certified Court Reporter Examiners."

CHAPTER 21

PROSECUTING ATTORNEYS

SUBCHAPTER 2 — PROSECUTOR COORDINATOR ACT

16-21-203. Prosecution Coordination Commission.

A.C.R.C. Notes. Acts 2012, No. 91, § 4, provided: "LEGISLATIVE INTENT. It is the intent of the General Assembly, in the transition to a state-funded deputy prosecuting attorney system, to provide an appropriate and adequate level of legal representation through deputy prosecuting attorneys in all areas of the state. It is recognized by the General Assembly that in many areas of the state, resources have not been available to support deputy prosecuting attorney salaries at the necessary level. With the transition of local funding

of deputy prosecuting attorney salaries to state funding, it is not the intent of the General Assembly to adversely affect those districts whose system has been working well or to implement a system which is too inflexible to respond to the needs of each judicial district. Therefore, the Prosecution Coordination Commission is charged with the responsibility of assisting in the maintenance of a system which equitably serves all areas of the state by providing quality deputy prosecuting attorneys."

CHAPTER 22

ATTORNEYS AT LAW

SUBCHAPTER 2 — ADMISSION AND PRACTICE

16-22-211. Corporations or associations — Practice of law or solicitation prohibited — Exceptions — Penalty.

CASE NOTES

Arbitration Proceedings.

Nonlawyer's representation of a corporation in arbitration proceedings constitutes the unauthorized practice of law. Arbitration proceedings bear significant indicia of legal proceedings under the Uniform Arbitration Act, which has been ad-

opted by Arkansas, and if a hearing is held during arbitration, the parties have the right to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing. *Nisha, LLC v. Tribuilt Constr. Group, LLC*, 2012 Ark. 130, — S.W.3d — (2012).

SUBCHAPTER 3 — RIGHTS AND LIABILITIES

16-22-308. Attorney's fees in certain civil actions.

CASE NOTES

ANALYSIS

Bankruptcy.
Breach of Contract.
Fees Allowed.
Fees Denied.
Prevailing Party.
Rescission.
Tort Action.

Bankruptcy.

Chapter 12 debtors' in possession 11 U.S.C.S. § 544 cause of action allowed the debtors to set aside creditor bank's mortgage lien due to the debtors' bona fide purchaser status, but was a cause of action peculiar to the Bankruptcy Code and differed from the types of actions which this section addressed. Thus this section was inapplicable to the avoidance action and the debtors were not entitled to their attorney's fees. *Caine v. First State Bank* (In re Caine), 462 B.R. 688 (Bankr. W.D. Ark. 2011).

Debtor's obligation to pay attorneys' fees arising from a state court lawsuit involving breach of contract was dischargeable because the fee award was based on the parties' agreement that provided that the losing party would pay for any dispute that arose between the parties, and this section, that awards attorneys' fees and costs to the prevailing party on a breach of contract claim. *Clear Sky Props. LLC v. Roussel* (In re Roussel), 483 Bankr. 915, 2012 Bankr. LEXIS 5590 (Bankr. E.D. Ark. Dec. 3, 2012).

Breach of Contract.

Trial court did not err in awarding attorney fees to real estate buyers in their breach of contract action because their request for fees was based on a contractual provision, not the statute; hence, the buyers' inclusion of a tort claim for damages was no impediment to an award of fees authorized under the real estate contract. *Marx Real Estate Invs., LLC v. Coloso*, 2011 Ark. App. 426, — S.W.3d — (2011).

Trial court erred in awarding attorney's fees to appellees because its dismissal of

appellant's complaint under Ark. R. Civ. P. 12(b)(6) was improper; appellant alleged facts sufficient to support the application of fraudulent concealment and that the statutes of limitation were tolled. *Russenberger v. Thomas Pest Control, Inc.*, 2012 Ark. App. 86, — S.W.3d — (2012).

Fees Allowed.

Section 18-50-117 required nonresident mortgagee to be authorized to do business in Arkansas, and noncompliance was not cured by an attorney-in-fact under § 18-50-102, not superseded by Ark. Code Ann. § 4-27-1501, and not preempted by 12 U.S.C.S. § 24 and 371 of the National Banking Act. Attorney's fees were awarded under this section. In re *Johnson*, 460 B.R. 234 (Bankr. E.D. Ark. 2011).

District court's calculation of an attorney fee award was supported by the detailed affidavits and time sheets attached to appellees' motion for attorneys' fees; because the case involved a complicated factual background, the potential for millions of dollars in liability, and a 10 count initial complaint that included 555 pages of exhibits, the district court did not abuse its discretion in awarding attorneys' fees. *Retro TV Network, Inc. v. Luken Commun., LLC*, — F.3d —, 2012 U.S. App. LEXIS 21569 (8th Cir. Oct. 17, 2012).

Because counsel for defendants were experienced attorneys with excellent legal skills, potentially millions of dollars were at stake and defendants prevailed on all of plaintiff's claims, and the attorneys charged reasonable hourly rates, under this section, counsel for defendants were entitled to an award of \$46,795 in attorneys fees. *Retro TV Network, Inc. v. Luken Commun., LLC*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 27679 (E.D. Ark. Mar. 2, 2012).

Fees Denied.

As claims by an estate executrix of fraud, estoppel, and fiduciary-duty were paramount, and a contract claim was not the primary basis for the action, the trial court properly refused to award attor-

ney fees to the prevailing party pursuant to this section. *Gibbs v. Bumgarner*, 2012 Ark. App. 81, — S.W.3d — (2012).

Prevailing Party.

In an action by home buyers against the sellers for recovery of the earnest money, in which the sellers asserted a counterclaim for damages for breach of contract, which resulted in a decision that the sellers were not entitled to damages but were entitled to keep the earnest money, neither party was the prevailing party for purposes of awarding attorney's fees under this section or the terms of the parties' real estate contract, or for costs under Ark. R. Civ. P. 54(d)(2). *Brackelsberg v. Hefin*, 2011 Ark. App. 678, — S.W.3d — (2011).

Trial court did not err in awarding attorney fees to the purchaser of an accounting office in a breach of contract action because the purchaser was the prevailing party; while the trial court dismissed the purchaser's claims for fraud, reimbursement of the purchase money for the building, and tortious interference, it awarded the purchaser all of the purchaser's requested fees. *Spann v. Lovett & Co.*, 2012 Ark. App. 107, — S.W.3d — (2012).

Circuit court did not abuse its discretion in finding that the client was the prevailing party where she successfully defended the breach-of-contract claim; the court limited the fee award and a successful defendant in a contract action could be considered a "prevailing party" for the purposes of this section. *Harrill & Sutter P.L.L.C. v. Kosin*, 2012 Ark. 385, — S.W.3d — (2012).

While appellants were granted summary judgment on individual claims against them, appellee recovered a judgment against appellants' company, and thus appellee was a prevailing party in terms of the entirety of the case; thus, the trial court did not err in denying appellants' motion for attorney fees. *Armstrong Remodeling & Constr., LLC v. Cardenas*, 2012 Ark. App. 387, — S.W.3d — (2012).

Rescission.

Remedy of rescission in a contract case does not foreclose this section's authorization for attorney's fees in a breach-of-contract case. Where a trial court's order and its oral findings indicate that a case sounded primarily in contract, rather than in tort, and the trial court was misled by dicta in case law, a remand was necessary for the reconsideration of a motion for fees. *Beck v. Inter City Transp., Inc.*, 2012 Ark. App. 370, — S.W.3d — (2012).

Tort Action.

Attorney fees should not have been awarded under this section because the action was not primarily based in contract; the case sounded primarily in tort because, in order for a cause of action for legal malpractice to be maintained, the contractual relationship requirement in § 16-22-310 had to be met. The core dispute was whether there was an oral contract to make a claim against an attorney and his legal-malpractice carrier. *Howard v. Adams*, 2012 Ark. App. 562, — S.W.3d — (2012).

Cited: *Worley v. City of Jonesboro*, 2011 Ark. App. 594, — S.W.3d — (2011).

16-22-309. Attorney's fees in actions lacking justiciable issue.

CASE NOTES

Fees.

Although appellant did not prevail, his claim was supported, and thus the court could not find that there was a complete

absence of a justiciable issue and the trial court erred in ordering the payment of fees. *Laster v. Williams*, 2012 Ark. App. 282, — S.W.3d — (2012).

16-22-310. Liability for civil damages.**CASE NOTES****Attorney Fees.**

Attorney fees should not have been awarded under § 16-22-308 because the action was not primarily based in contract; the case sounded primarily in tort because, in order for a cause of action for legal malpractice to be maintained, the

contractual relationship requirement in this section had to be met. The core dispute was whether there was an oral contract to make a claim against an attorney and his legal-malpractice carrier. *Howard v. Adams*, 2012 Ark. App. 562, — S.W.3d — (2012).

SUBTITLE 3. JURIES AND JURORS**CHAPTER 31****JUROR QUALIFICATIONS AND EXEMPTIONS****16-31-102. Disqualifications.****CASE NOTES****Opinion.**

In a rape prosecution where the victim was a police officer, the fact that the prosecutor asked the jurors during voir dire to agree that a combat trained person could be raped with minimal force did not vio-

late subdivision (b)(3) of this section, as the jurors were not asked to agree that rape could occur without force, but the questions were directed to the amount of force necessary. *McElroy v. State*, 2011 Ark. App. 533, — S.W.3d — (2011).

CHAPTER 33**EXAMINATION AND CHALLENGE****SUBCHAPTER 3 — CRIMINAL PROCEEDINGS****16-33-305. Challenge to trial jurors — Individual juror — Peremptory.****CASE NOTES****Challenge Precluded.**

In a driving while intoxicated case, appellant was unable to challenge the jurors on the basis of bias because appellant did not object at the end of the selection process, and there was no evidence that appellant was forced to accept a juror

after having exhausted her three peremptory challenges. *Carruth v. State*, 2012 Ark. App. 305, — S.W.3d — (2012).

Cited: *Carruth v. State*, — Ark. App. —, — S.W.3d —, 2012 Ark. App. LEXIS 432 (May 2, 2012).

SUBTITLE 4. EVIDENCE AND WITNESSES**CHAPTER 42****SEXUAL OFFENSES****16-42-101. Admissibility of evidence of victim's prior sexual conduct.****CASE NOTES****ANALYSIS**

Constitutionality.

Admissibility.

Preservation.

Relevance.

Constitutionality.

In a case in which defendant was convicted of four counts of sexual assault of a minor, the trial court properly upheld the constitutionality of the rape shield statute. The statute survived defendant's separation of powers challenge. *Nelson v. State*, 2011 Ark. 429, — S.W.3d — (2011).

Admissibility.

Defendant's conviction for raping his daughter under § 5-14-103(a)(4)(A)(i) was appropriate because the evidence was sufficient and because the circuit court properly denied defendant's rape-shield motions. Consent was never an issue in a rape-by-guardian case, and when consent was not an issue, whether the victim had sexual relations with a third person was entirely collateral and irrelevant under subsections (b) and (c) of this section. *Vance v. State*, 2011 Ark. 392, — S.W.3d — (2011).

Preservation.

Defendant failed to preserve for review his argument that a court erred during his rape trial in not allowing testimony concerning the victim's previous sexual conduct; he failed to follow the procedure set forth in subsection (c) of this section for establishing relevancy and admissibility of evidence otherwise excluded by the rape-shield statute. *Stewart v. State*, 2012 Ark. 349, — S.W.3d — (2012).

Relevance.

In a case in which the Director of the Arkansas Department of Correction appealed a district court's decision to grant an inmate's 28 U.S.C.S. § 2254 petition for a writ of habeas corpus in which the inmate argued that the trial judge violated his constitutional right to present a defense by excluding evidence of the victim's prior sexual history pursuant to this section, the rape shield statute, the trial court determined that the evidence was irrelevant, and the decision by the Supreme Court of Arkansas to uphold the evidentiary ruling of the trial court was not contrary to, nor did it involve an unreasonable application of, clearly established federal law. *Jackson v. Norris*, 651 F.3d 923 (8th Cir. 2011).

CHAPTER 43

WITNESSES GENERALLY

SUBCHAPTER 2 — SECURING ATTENDANCE GENERALLY

16-43-212. Criminal proceedings — Issuance of subpoenas pursuant to investigations.

CASE NOTES

Authority of Prosecutor.

During a capital murder trial, the court did not err in admitting text messages from a cellular telephone number assigned to defendant because the prosecu-

tor's subpoena requests were not unreasonable in scope or irrelevant; the prosecutor did not abuse the prosecutor's subpoena power. *Gulley v. State*, 2012 Ark. 368, — S.W.3d — (2012).

SUBCHAPTER 9 — PATERNITY OR CHILD SUPPORT

16-43-901. Competent witnesses.

CASE NOTES

Cited: *Putt v. Suttles*, 2011 Ark. App. 688, — S.W.3d — (2011).

CHAPTER 46

DOCUMENTARY EVIDENCE GENERALLY

SUBCHAPTER 1 — GENERAL PROVISIONS

16-46-108. Photographically reproduced records admissible in court.

CASE NOTES

Admissibility.

In an action to collect unpaid credit card debt, the trial court abused its discretion in excluding business records which reflected a credit card debt owed by the cardholder because the documents were supported by an affidavit that complied

with subsection (b) of this section. The cardholder never claimed a lack of notice and made no objection to the admission of the business records. *Ozark Capital Corp. v. Pullen*, 2012 Ark. App. 652, — S.W.3d —, 2012 Ark. App. LEXIS 771 (Nov. 14, 2012).

CHAPTER 47**ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS****SUBCHAPTER 1 — GENERAL PROVISIONS****16-47-101. Proof or acknowledgment as prerequisite to recording real estate conveyances.****CASE NOTES****Lis Pendens.**

As a lis pendens is not an instrument in writing for the conveyance of any real estate or by which any real estate may be affected in law or equity, acknowledgment

of the lis pendens is not required under this section. *Benefit Bank v. Rogers*, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

SUBTITLE 5. CIVIL PROCEDURE GENERALLY**CHAPTER 55****GENERAL PROVISIONS****SUBCHAPTER 2 — CIVIL JUSTICE REFORM ACT OF 2003****16-55-201. Modification of joint and several liability.****CASE NOTES****ANALYSIS**

Construction.
Jury Instructions.

Construction.

This section plainly provides that liability is to be apportioned with regard to “each defendant.” Where there is only one defendant, this section is inapplicable. *Proassurance Indem. Co. v. Metheny*, 2012 Ark. 461, — S.W.3d —, 2012 Ark. LEXIS 499 (Dec. 13, 2012).

Jury Instructions.

In a medical negligence case that was brought against a liability insurer after a

surgeon operated on the wrong side of the patient’s brain, the circuit court did not abuse its discretion in refusing to submit non-model jury instructions that would have required the jury to apportion liability to parties who were not defendants; the circuit court properly instructed the jury to allocate the fault of the hospital where the surgery was performed only to the insurer. *Proassurance Indem. Co. v. Metheny*, 2012 Ark. 461, — S.W.3d —, 2012 Ark. LEXIS 499 (Dec. 13, 2012).

16-55-206. Standards for award of punitive damages.

CASE NOTES

ANALYSIS

Conduct Not Warranting Punitive Damages.
Relevant Evidence.

Conduct Not Warranting Punitive Damages.

In this action for negligent hiring, training, supervision or monitoring, and retention, defendants were granted summary judgment on plaintiffs' claims for punitive damages because plaintiffs had not provided evidence that would allow a reasonable jury to find that defendants knew or ought to have known that their conduct would naturally and probably result in injury or damage to the victim. *Perry v. Stevens Transp., Inc.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 94942 (E.D. Ark. July 9, 2012).

Alleged violations of the Federal Motor Carrier Safety Regulations did not support a punitive-damages award, because

there was no evidence that the driver had been drinking alcohol or using controlled substances prior to the accident or that he was or appeared to be under the influence of alcohol or any controlled substances at the time of the accident. *Brumley v. Keech*, 2012 Ark. 263, — S.W.3d — (2012).

Relevant Evidence.

Defendants were not entitled to summary judgment on punitive damages because a reasonable juror could find that defendant property owner, acting on behalf of defendant entities, knew or had reason to know that proceeding with excavation of the hillside without a recommended retaining wall in place would inflict injury to plaintiff's property, but he proceeded with excavation with conscious indifference to the consequences, from which malice may be inferred. *Rivercliff Co. v. Residences at Riverdale GP, LLC*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 139158 (E.D. Ark. Dec. 2, 2011).

16-55-207. Burden of proof for award of punitive damages.

CASE NOTES

Summary Judgment Denied.

Defendants were not entitled to summary judgment on punitive damages because a reasonable juror could find that defendant property owner, acting on behalf of defendant entities, knew or had reason to know that proceeding with excavation of the hillside without a recom-

mended retaining wall in place would inflict injury to plaintiff's property, but he proceeded with excavation with conscious indifference to the consequences, from which malice may be inferred. *Rivercliff Co. v. Residences at Riverdale GP, LLC*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 139158 (E.D. Ark. Dec. 2, 2011).

16-55-208. Limitations on the amount of punitive damages.

CASE NOTES

Constitutionality.

This section was unconstitutional under Ark. Const. Art. 5, § 32, because it limited the amount of recovery outside of an employment relationship. Therefore, a punitive damage award of \$42 million against

a manufacturer of genetically altered rice that allowed its rice to contaminate conventional seed was upheld. *Bayer Crop-Science LP v. Schafer*, 2011 Ark. 518, — S.W.3d — (2011).

16-55-213. Venue.**CASE NOTES****Review.**

Even though an issue relating to venue was not waived because a compulsory counterclaim under Ark. R. Civ. P. 13(a) was filed, instead of a permissive counterclaim, an appellate court still could not reach the issue on review because an argument regarding whether subsection (a) of this section repealed § 16-60-111(a)(1) by implication was not raised

below. In the motion for a change of venue, it was argued that the matter should have been transferred to a county where an executrix was a resident since the cause of action arose there, all witnesses resided there, and the official record and other matters related to the case were on record there. *Richardson v. Brown*, 2012 Ark. App. 535, — S.W.3d — (2012).

CHAPTER 56**LIMITATION OF ACTIONS****SUBCHAPTER 1 — GENERAL PROVISIONS****16-56-105. Actions with limitation of three years.****CASE NOTES****ANALYSIS**

Construction.

Attorneys.

Contracts Generally.

Employment Contracts.

Fraud and Deceit.

Tolling of Statute.

Torts.

Construction.

Summary judgment was properly granted in favor of a construction company in a negligent construction case because a lawsuit was not filed until after the three-year period in subsection (3) of this section had run; there was no evidence that the company had performed any repairs or that repairs were done on its behalf, and, even if repair work had been done on the company's behalf, the statute of limitations would have only been tolled during the period of repairs, which was not of sufficient length to render the claim timely. Without proof of the attempted repairs, the statute of repose in § 16-56-112(a) did not come into play, and there was no tolling of the three-year statute of limitations. *Marshall v. Turman Constr. Corp.*, 2012 Ark. App. 686, —

S.W.3d —, 2012 Ark. App. LEXIS 806 (Dec. 5, 2012).

Attorneys.

Circuit court did not err by dismissing appellants' legal malpractice claims against their attorney, because they were barred by the three-year statute of limitations under this section; although appellants attempted to categorize the claims differently, the "gist" of their complaint was legal malpractice. The circuit court did not err in failing to apply the discovery rule, because the traditional occurrence rule applied in Arkansas; and appellants did not bring their action within three years of the last alleged negligent act. *Richardson v. Madden*, 2012 Ark. App. 120, — S.W.3d — (2012).

Contracts Generally.

Written security agreement was a sufficient acknowledgment of a valid existing debt for attorney's fees so as to start the statute of limitations running anew. However, the written acknowledgement did not transform the oral agreement for fees into a written one, and the three-year statute applicable to oral agreements under this section still applied, rather than the five-year statute for written agree-

ments under § 16-56-111, thereby barring an attorney's claim for fees. *Still v. Perroni Law Firm*, 2011 Ark. 447, — S.W.3d — (2011).

Employment Contracts.

Three-year statute of limitations set forth in this section applies to private causes of action brought pursuant to the Arkansas Minimum Wage Act, § 11-4-218(e), because § 11-4-218(e) constitutes a liability created expressly by statute, and it does not include a specific limitations provision; where a cause of action is brought pursuant to a statute that does not expressly provide a limitations period, this section is the appropriate limitations provision. *Douglas v. First Student, Inc.*, 2011 Ark. 463, — S.W.3d — (2011).

Fraud and Deceit.

Trial court did not err in granting a law firm's partial motion for summary judgment based on the three-year statute of limitations under subdivision (1) of this section, and dismissing an attorney's counterclaim for constructive fraud because the firm presented evidence that it was unaware of an erroneous fee percentage until after the litigation began, and

the attorney failed to meet proof with proof. *Grayson & Grayson, P.A. v. Couch*, 2012 Ark. App. 20, — S.W.3d — (2012).

Tolling of Statute.

Claims by mineral lessors, including under the Arkansas Deceptive Trade Practices Act, § 4-88-101 et seq., were properly dismissed as time-barred under this section and § 4-88-115 where they were brought more than five years after the leases were executed; fraud was not sufficiently shown for purposes of tolling. *Hipp v. Vernon L. Smith & Assocs.*, 2011 Ark. App. 611, — S.W.3d — (2011).

Torts.

In a foreclosure case involving a construction loan, summary judgment was properly granted on the borrower's non-suited counterclaims for negligence and interference with business expectancies, which were untimely under this section because they were filed more than three years after the lender refused further funding of the loan and were not saved by § 16-56-126 because they were filed more than two years after the voluntary non-suit. *Grand Valley Ridge, LLC v. Metro. Nat'l Bank*, 2012 Ark. 121, — S.W.3d — (2012).

16-56-111. Notes and instruments in writing and other writings.

CASE NOTES

ANALYSIS

- Applicability.
- Debts.
- Insurance.
- Written Acknowledgement of Oral Contract.

Applicability.

Circuit court did not err by dismissing appellants' legal malpractice claims against their attorney, because they were barred by the three-year statute of limitations under this section. Although appellants attempted to categorize the claims differently, the "gist" of their claim was legal malpractice; therefore, the five-year statute of limitations set forth in this section did not apply. *Richardson v. Mad-den*, 2012 Ark. App. 120, — S.W.3d — (2012).

Debts.

Because appellee lender received insurance payments when the collateral for a promissory note was damaged in a fire, the trial court did not err in finding that the five-year statute of limitations for an action on the note was tolled under subsection (b) of this section by partial payments. *Payton v. Coleman*, 2012 Ark. App. 160, — S.W.3d — (2012).

Insurance.

Insured's breach of contract suit, which was brought outside an accidental death and dismemberment policy's three-year time limit, was timely. A§ 23-79-202 precluded the insurer from contractually shortening the limitations period to less than the five-year period for breach of contract actions under subsection (a) of this section. *Graham v. Hartford Life &*

Accident Ins. Co., 677 F.3d 801 (8th Cir. 2012).

Written Acknowledgement of Oral Contract.

Written security agreement was a sufficient acknowledgment of a valid existing debt for attorney's fees so as to start the statute of limitations running anew. However, the written acknowledgment did

not transform the oral agreement for fees into a written one, and the three-year statute applicable to oral agreements under § 16-56-105 still applied, rather than the five-year statute for written agreements under this section, thereby barring an attorney's claim for fees. *Still v. Perroni Law Firm*, 2011 Ark. 447, — S.W.3d — (2011).

16-56-112. Design, planning, supervision, or observation of construction, repair, etc. — Actions for property damage, personal injury, or wrongful death.

CASE NOTES

ANALYSIS

Applicability.
Action Barred.

Applicability.

Summary judgment was properly granted in favor of a construction company in a negligent construction case because a lawsuit was not filed until after the three-year period in § 16-56-105(3) had run; there was no evidence that the company had performed any repairs or that repairs were done on its behalf, and, even if repair work had been done on the company's behalf, the statute of limitations would have only been tolled during the period of repairs, which was not of sufficient length to render the claim timely. Without proof of the attempted repairs, the statute of repose in subsection (a) of this section did not come into play, and there was no tolling of the three-year statute of limitations. *Marshall v. Turman Constr. Corp.*, 2012 Ark. App. 686, —

S.W.3d —, 2012 Ark. App. LEXIS 806 (Dec. 5, 2012).

Action Barred.

Because subsection (f) of this section unambiguously prohibited the parties to a construction contract from extending, by agreement or otherwise, the five-year-limitations period set forth in subsection (a), the architect and designer were properly awarded partial summary judgment in an owner's breach of contract action. *First Elec. Coop. Corp. v. Black, Corley, Owens & Hughes, P.A.*, 2011 Ark. App. 447, — S.W.3d — (2011).

Even though they relied on a written builder's warranty, the crux of homeowners' complaint was that they were damaged by the defective construction of their house. This fit squarely within this section, the statute of repose, and therefore their action brought more than five years after the home was completed was barred. *Varadan v. Pagnozzi*, 2012 Ark. App. 700, — S.W.3d —, 2012 Ark. App. LEXIS 824 (Dec. 12, 2012).

16-56-114. Judgments and decrees.

CASE NOTES

Foreign Judgments.

Petition to revive a foreign judgment was not barred by the running of the statute of limitations under this section because the application was filed well within the 10 year period of a judgment that was registered in 2003; even if a judgment filed in 2001 was the appropri-

ate judgment to begin the running of the limitations period, the application was still timely because it was filed exactly 10 years from the date the judgment. The day that the judgment was entered was not counted in computing the limitations period. *Bird v. Shaffer*, 2012 Ark. App. 464, — S.W.3d — (2012).

16-56-115. Limitation of actions not otherwise provided for.**CASE NOTES**

Cited: Douglas v. First Student, Inc., 2011 Ark. 463, — S.W.3d — (2011).

16-56-126. Commencement of new action or filing mandate after nonsuit or arrest or reversal of judgment.**CASE NOTES****ANALYSIS**

In General.

Nonsuit.

Tolling Statute of Limitations.

In General.

A plaintiff may only invoke this section, Arkansas's savings statute, if the plaintiff files the complaint before the period of limitations has expired and then completes timely service on the defendant against whom the subsequent action is brought. Haynes v. Wire, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 88743 (E.D. Ark. June 27, 2012).

Nonsuit.

Appellee's counterclaim for quiet title was not barred by subdivision (a)(1) of this section as a prior court did not treat appellee's affirmative defense of adverse possession as a counterclaim under § 18-61-101(a), and the nonsuit of the prior action did not affect the statute of limitations, which had not begun to run on the quiet title claim as appellee was still in possession of the property. Sutton v. Gardner, 2011 Ark. App. 737, — S.W.3d — (2011).

Savings statute did not give an estate administrator a year to file a wrongful death suit following the Arkansas Workers' Compensation Commission's dismissal of a workers' compensation claim, as the Commission's decision was not a "nonsuit"; the Commission denied the claim on the merits. Frisby v. Milbank Mfg. Co., 688 F.3d 540 (8th Cir. 2012).

Tolling Statute of Limitations.

Because the court denied class certification under Fed. R. Civ. P. 23 in an earlier filed case on the ground that the named plaintiffs were not typical of or adequate representatives for the class, it was not a reason equally applicable to any later suit, so American Pipe applied and the statute of limitations was tolled by the prior action. Under this section, the Arkansas's savings statute, the tolling gave plaintiffs one year after certification was denied in the prior action to commence a new action and receive the full protection of the prior action, and because plaintiffs filed the instant action within that year, they received the maximum benefit of the tolling, except that they could not recover from any further back than October 1, 2006, because prior to October 1, 2006, the employer was exempt from the Arkansas Minimum Wage Act as it was subject to the minimum wage and overtime provisions of the Fair Labor Standards Act. Garner v. Butterball, LLC, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 21859 (E.D. Ark. Feb. 22, 2012).

In a foreclosure case involving a construction loan, summary judgment was properly granted on the borrower's non-suited counterclaims for negligence and interference with business expectancies, which were untimely under § 16-56-105 because they were filed more than three years after the lender refused further funding of the loan and were not saved by this section because they were filed more than two years after the voluntary nonsuit. Grand Valley Ridge, LLC v. Metro. Nat'l Bank, 2012 Ark. 121, — S.W.3d — (2012).

CHAPTER 59

LIS PENDENS

16-59-101. Filing of notice required to constitute constructive notice of pending action.

CASE NOTES

ANALYSIS

Acknowledgment.
Effect of Filing.
Priorities.

Acknowledgment.

As a lis pendens is not an instrument in writing for the conveyance of any real estate or by which any real estate may be affected in law or equity, acknowledgment of the lis pendens is not required under Ark. Code Ann. § 16-47-101. *Benefit Bank v. Rogers*, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

Effect of Filing.

As a husband voluntarily signed and his wife filed a lis pendens against real property before their divorce was final, litigation relating to the property was clearly

pending at the time of the filing; therefore, a bank which later acquired a mortgage on the property was on notice that the property was being litigated in some fashion. *Benefit Bank v. Rogers*, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

Priorities.

As the divorce court did not unilaterally impose a lis pendens on real estate as security for a former husband's payment of spousal support to appellee, but both parties agreed to its being imposed, the lis pendens was valid and appellee's interest in the property was senior to that of a bank which later acquired a mortgage on that property. *Benefit Bank v. Rogers*, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

16-59-102. Contents of notice.

CASE NOTES

Cited: *Benefit Bank v. Rogers*, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

CHAPTER 60

VENUE

SUBCHAPTER 1 — GENERAL PROVISIONS

16-60-111. Actions on debt, account, or note.

CASE NOTES

Review.

Even though an issue relating to venue was not waived because a compulsory counterclaim under Ark. R. Civ. P. 13(a) was filed, instead of a permissive counterclaim, an appellate court still could not

reach the issue on review because an argument regarding whether § 16-55-213(a) repealed subdivision (a)(1) of this section by implication was not raised below. In the motion for a change of venue, it was argued that the matter should have

been transferred to a county where an executrix was a resident since the cause of action arose there, all witnesses resided there, and the official record and other

matters related to the case were on record there. *Richardson v. Brown*, 2012 Ark. App. 535, — S.W.3d — (2012).

CHAPTER 61
PARTIES

SUBCHAPTER 1 — GENERAL PROVISIONS

16-61-105. Actions by insane persons.

CASE NOTES

Attorney.

Because the acts of attorneys raised questions under Ark. R. Prof'l Conduct 1.7, 1.14, and 1.16, the matter was referred to the Supreme Court Committee on Professional Conduct to determine

whether any disciplinary action was warranted; following their disqualification and the appointment of a guardian, the attorneys persisted in filing legal documents on behalf of a ward. *Kuelbs v. Hill*, 2011 Ark. App. 628, — S.W.3d — (2011).

SUBCHAPTER 2 — UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

16-61-203. Judgment against one tortfeasor.

CASE NOTES

In General.

Uniform Contribution Among Tortfeasors Act, § 16-61-201 through -212, was not triggered in an action for personal injury arising from a motor vehicle accident, and did not bear on the question of the validity of the circuit court's granting the defendant an offset against judgment in the amount of insurance proceeds pre-

viously paid to the plaintiffs, because there was only one defendant at trial and nothing in the circuit court's order granting the offset suggested that the offset was based on an earlier settlement between the plaintiffs and other defendants. *Brown v. Lee*, 2012 Ark. 417, — S.W.3d —, 2012 Ark. LEXIS 436 (Nov. 8, 2012).

16-61-204. Release — Effect on injured person's claim.

CASE NOTES

Agreements.

Injured patient and a hospital agreed that they would inform the jury about a nurse anesthetist's settlement with the patient and that the hospital would waive its right to a credit; in other words, they agreed that the jury would solely determine the hospital's liability and award monetary damages for harm caused by the

hospital. An appellate court therefore refused to grant the patient's request that the jury assess the hospital's share alone and that the hospital pay its fair share of the damages. *Villines v. N. Ark. Reg'l Med. Ctr.*, 2011 Ark. App. 506, — S.W.3d — (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 688 (Ark. Ct. App. Oct. 26, 2011).

CHAPTER 62

SURVIVAL AND ABATEMENT OF ACTIONS

16-62-101. Survival of actions — Wrongs to person or property.

CASE NOTES

Death of Party.

Subdivision (a)(1) of this section did not provide for the claim of invasion of privacy to survive the death of the decedent. Can-

nady v. St. Vincent Infirmary Med. Ctr., 2012 Ark. 369, — S.W.3d — (2012).

Cited: Lucas v. Wilson, 2011 Ark. App. 584, — S.W.3d — (2011).

16-62-102. Wrongful death actions — Survival.

CASE NOTES

ANALYSIS

Applicability.

Parties.

Statute of Limitations.

Applicability.

Rejection of the husband's claim that he had a curtesy interest in a settlement award involving his deceased wife was appropriate because the wife never possessed a chose in action since there was no cause of action for wrongful death created in any individual beneficiary under this section, the wrongful-death statute. *Bridges v. Shields*, 2011 Ark. 448, — S.W.3d — (2011).

Parties.

Trial court erred by disregarding a nunc pro tunc order entered in the probate court appointing appellants as co-special administrators, effective before the wrongful death action was filed, as: (1) the nunc pro tunc order gave appellants standing under subsection (b) of this sec-

tion to bring the wrongful death action; (2) the statute of limitations under § 16-114-203(a) did not bar the wrongful death action; (3) by choosing to ignore the nunc pro tunc order, the trial court effectively invalidated the order, which was beyond its jurisdiction to do; and (4) the case did not involve the relation back doctrine under Ark. R. Civ. P. 15. *Smith v. Rebsamen Med. Ctr., Inc.*, 2011 Ark. App. 722, — S.W.3d — (2011).

Statute of Limitations.

Filing of a workers' compensation claim did not toll the statute of limitations on a wrongful death suit; the Arkansas Workers' Compensation Commission's primary jurisdiction to determine workers' compensation coverage did not prevent the tort action from being filed while the workers' compensation claim was pending. *Frisby v. Milbank Mfg. Co.*, 688 F.3d 540 (8th Cir. 2012).

Cited: Lucas v. Wilson, 2011 Ark. App. 584, — S.W.3d — (2011).

CHAPTER 63
PLEADINGS AND PRETRIAL PROCEEDINGS

SUBCHAPTER 4 — CONTINUANCE OR DISMISSAL

16-63-402. Continuance for absence of evidence or witness.

CASE NOTES

Reviewability.

Revocation of defendant's suspended imposition of sentence was appropriate because he never argued to the trial court that the state had not filed an affidavit in accordance with subsection (a) of this sec-

tion. In the absence of an objection at trial, any argument concerning the failure to submit such an affidavit would not be addressed on appeal. *Dotson v. State*, 2011 Ark. App. 731, — S.W.3d — (2011).

SUBCHAPTER 5 — CITIZEN PARTICIPATION IN GOVERNMENT ACT

16-63-501. Title.

RESEARCH REFERENCES

ALR. Application of Anti-SLAPP ("Strategic Lawsuit Against Public Participation") Statutes to Real Estate Develop-

ment, Land Use, and Zoning Disputes. 64 A.L.R.6th 365.

16-63-504. Immunity from suit.

RESEARCH REFERENCES

ALR. Application of Anti-SLAPP ("Strategic Lawsuit Against Public Participation") Statutes to Real Estate Develop-

ment, Land Use, and Zoning Disputes. 64 A.L.R.6th 365.

CHAPTER 64
TRIAL AND VERDICT

16-64-115. Jury instructions — Further instruction during deliberations.

CASE NOTES

ANALYSIS

Deposition Testimony.
No Violation Found.

Deposition Testimony.

In a medical malpractice action, a trial court did not err in allowing videotape deposition testimony by plaintiff's treat-

ing physician to be replayed to the jury because no transcript of the deposition was available and the trial court complied with the requirements of this section by replaying the physician's entire testimony, including both direct and cross-examination, in open court with all parties present. *Padilla v. Archer*, 2011 Ark. App. 746, — S.W.3d — (2011).

No Violation Found.

Trial court did not err in denying an administratrix's motion for a new trial after a jury awarded judgment to a home health care company and its employees in an action for negligence because a bailiff did not violate the statute by answering a

jury question; the bailiff's stated in an affidavit that after the bailiff informed the attorneys that the jury had a question, the jurors told the bailiff they had figured it out. *Houchins v. Home Care Professionals of Ark., Inc.*, 2012 Ark. App. 553, — S.W.3d — (2012).

16-64-116. Conduct of jury after submission of case.**CASE NOTES****No Violation Found.**

Trial court did not err in denying an administratrix's motion for a new trial after a jury awarded judgment to a home health care company and its employees in an action for negligence because a bailiff did not violate the statute by answering a

jury question; the bailiff's stated in an affidavit that after the bailiff informed the attorneys that the jury had a question, the jurors told the bailiff they had figured it out. *Houchins v. Home Care Professionals of Ark., Inc.*, 2012 Ark. App. 553, — S.W.3d — (2012).

16-64-122. Comparative fault.**CASE NOTES****ANALYSIS**

Jury Instructions.
Pleading.

Jury Instructions.

Trial court properly instructed the jury on comparative fault as the broad language set forth in this section contradicted plaintiff's claim that fault should not be compared in enhanced-injury cases; under Arkansas law, comparative fault was applicable to all actions for personal injury or wrongful death. *Bishop v. Tariq,*

Inc., 2011 Ark. App. 445, — S.W.3d — (2011).

Pleading.

As a consequence of failing to plead contributory negligence as an affirmative defense, defendant retailer did not have available the full benefit of a contributory negligence defense under subsection (b) of this section, but the failure did not make all evidence relating to plaintiff's conduct excludable under Fed. R. Evid. 401 and 403. *Dupont v. Fred's Stores of Tenn., Inc.*, 652 F.3d 878 (8th Cir. 2011).

CHAPTER 65

JUDGMENTS GENERALLY

SUBCHAPTER 1 — GENERAL PROVISIONS

16-65-117. Judgment as lien on land.

CASE NOTES

ANALYSIS

Homestead.
Judgments.

Homestead.

Through 11 U.S.C.S. § 544(a)(1), the bankruptcy provided Chapter 12 debtors in possession with judgment lien rights under subdivision (a)(1) of this section, but the property was subject to an Ark. Const. Art. 9, § 3, homestead to which such a lien could not attach, thus, avoidance of creditor bank's mortgage was not

available under § 544(a)(1). *Caine v. First State Bank (In re Caine)*, 462 B.R. 688 (Bankr. W.D. Ark. 2011).

Judgments.

Directed verdict was appropriate, because the judgment debtors did not own the property, and as a matter of law, the company's judgment lien did not attach to the property that was now owned by the current owner; there was no evidence that the judgment debtors owned the property. *Buckeye Ret. Co., LLC v. Walter*, 2012 Ark. App. 257, — S.W.3d — (2012).

16-65-121. Judgments, etc., effective from date rendered.

CASE NOTES

Construction.

Court did not err in finding that appellees timely revived the 1999 decree where they filed their writ of scire facias on May 13, 2009, within ten years from May 25, 1999, the effective date of the decree, because the Arkansas Supreme Court had

previously found Ark. R. Civ. P. 58 effectively superseded this section, and there was no reason not to extend this finding, which involved this more generally applicable section, to § 16-65-501. *Middleton v. Lockhart*, 2012 Ark. 131, — S.W.3d — (2012).

SUBCHAPTER 5 — SURVIVAL AND REVIVAL

16-65-501. Scire facias.

CASE NOTES

Revival.

Court did not err in finding that appellees timely revived the 1999 decree where they filed their writ of scire facias on May 13, 2009, within ten years from May 25, 1999, the effective date of the decree, because the Arkansas Supreme Court had previously found Ark. R. Civ. P. 58 effectively superseded § 16-65-121, and there was no reason not to extend this finding,

which involved the more generally applicable § 16-65-121, to this section. *Middleton v. Lockhart*, 2012 Ark. 131, — S.W.3d — (2012).

Court did not err in concluding that the 1999 decree could be revived by a writ of scire facias under this section, because the 1999 decree was entitled to the same footing as a judgment, and chancery courts had the statutory power to issue

writs of execution to enforce their decrees.
Middleton v. Lockhart, 2012 Ark. 131, —
S.W.3d — (2012).

CHAPTER 66

EXECUTION OF JUDGMENTS

SUBCHAPTER 1 — GENERAL PROVISIONS

16-66-101. Execution issued on final judgment order.

CASE NOTES

Cited: Tiner v. Tiner, 2012 Ark. App. 483, — S.W.3d — (2012).

SUBCHAPTER 2 — PROPERTY SUBJECT TO EXECUTION — EXEMPTIONS

16-66-211. Claiming exemptions — Schedule of property — Stay of execution — Levy on remainder of property — Appeal.

CASE NOTES

Contempt.

There was no err in holding appellants in contempt for failing to comply with this section, because the court was not dependent upon affidavits or verified petitions, appellants were served with a copy of the contempt petition, appellants were represented by counsel and had an opportunity to defend at the hearing on the petition for contempt; the court had ordered appellants to file their schedules of assets with

the court clerk within forty-five days from the date of the judgments, and the court was not dependent upon affidavits or verified petitions since all the court had to do was examine the court clerk's files and see that the schedules had not been filed within forty-five days to establish a prima facie case of contempt. P. J. Transp., Inc. v. First Serv. Bank, 2012 Ark. App. 292, — S.W.3d — (2012).

16-66-218. Exemptions from execution under federal bankruptcy proceedings.

CASE NOTES

Constitutionality.

Because subdivisions (a)(2) and (4) of this section provide for exemptions in excess of the amount set by the Arkansas

Constitution, the statutory exemptions are unconstitutional. In re Kelley, 455 B.R. 710 (Bankr. E.D. Ark. 2011).

16-66-220. Pension and profit-sharing plans.**CASE NOTES****Interpretation.**

Subdivision (a)(1) of this section was not unconstitutional, because the IRA exemption was not an absolute exemption of all personal property, and as such, did not offend Ark. Const. Art. 9, § 2; as long as the exemption at issue was not an abso-

lute exemption of all personal property, but instead related only to exempting certain funds from general garnishment statutes, then the exemption did not violate Ark. Const. Art. 9, § 2. *Clinical Study Ctrs., Inc. v. Boellner*, 2012 Ark. 266, — S.W.3d — (2012).

16-66-221. Schedule of property — Filing.**CASE NOTES****Application and Construction.**

This section did not apply to the judgment debtors, because the debtors had not been residents of Arkansas for more than seven years, and subsection (c) merely required the court to include the asset-

schedule provision in its order if a resident defendant was required to prepare such a schedule in accordance with subsection (a). *Hauser v. Sims*, 2012 Ark. App. 295, — S.W.3d — (2012).

SUBCHAPTER 6 — UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT**16-66-601. Definition.****CASE NOTES****Authentication.**

Petition to revive a foreign judgment was properly granted because it was authenticated under Ark. R. Civ. P. 44 where it was signed by a clerk for a United States Bankruptcy Court; the Arkansas Supreme Court's rule-making authority

over procedural matters was exclusive. It was argued that the proper authentication process was not followed when a certified copy of the judgment was attached to an application. *Bird v. Shaffer*, 2012 Ark. App. 464, — S.W.3d — (2012).

16-66-602. Filing and status of foreign judgments.**CASE NOTES****Application.**

Petition to revive a foreign judgment was properly granted because it was authenticated under Ark. R. Civ. P. 44 where it was signed by a clerk for a United States Bankruptcy Court; the Arkansas Supreme Court's rule-making authority

over procedural matters was exclusive. It was argued that the proper authentication process was not followed when a certified copy of the judgment was attached to an application. *Bird v. Shaffer*, 2012 Ark. App. 464, — S.W.3d — (2012).

CHAPTER 68

COSTS AND BONDS

SUBCHAPTER 6 — INCARCERATED PERSONS

16-68-607. Multiple lawsuits.

CASE NOTES

Application.

Petitioner failed to show that the circuit court erred when it determined his habeas petition was a civil action that constituted one strike for purposes of this section, because § 16-106-202 had no application to this section, and this section did apply,

when the circuit court correctly found that the petition for writ of habeas corpus failed to state a claim upon which relief could be granted and the petition did constitute a strike for purposes of that section. *McArty v. Hobbs*, 2012 Ark. 257, — S.W.3d — (2012).

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY

CHAPTER 81

ARREST

SUBCHAPTER 2 — STOP AND SEARCH

16-81-203. Grounds to reasonably suspect.

CASE NOTES

ANALYSIS

Informant's Information.
Reasonableness.
"Reasonably Suspect."

Informant's Information.

Officer had reasonable suspicion to stop and detain defendant based on a reliable confidential informant's information that he was going to deliver methamphetamine at a specified convenience store and defendant's arrival at the store, followed by the informant's call to defendant that he was at the wrong store and defendant's then leaving the first store and driving toward the other store. *Owens v. Arkansas*, 2011 Ark. App. 763, — S.W.3d — (2011).

Officer had reasonable suspicion to stop defendant and investigate drug-related criminal activity because a reliable known informant provided information about a delivery of methamphetamine. The fact

that defendant arrived in a black car rather than a white car of the same make as described did not undermine reasonable suspicion. *James v. State*, 2012 Ark. App. 118, — S.W.3d — (2012).

Reasonableness.

Trial court did not err in denying defendant's motion to suppress evidence seized as a result of a detention and a canine sniff of defendant's truck because an officer had reasonable suspicion to detain defendant under subdivisions (1), (3), (6) and (9) of this section; after stopping defendant for driving a vehicle with a broken tail light, the officer noted that defendant refused to make eye contact, exhibited increased nervousness, and was known to have had prior drug problems. *Johnson v. State*, 2012 Ark. App. 167, — S.W.3d — (2012).

"Reasonably Suspect."

Circuit court's ruling denying defendant's motion to suppress evidence recov-

ered in a search of her truck after she was stopped for a traffic violation was not clearly against the preponderance of the evidence. Factors that combined to give a state trooper a reasonable suspicion that defendant was engaged in criminal activity were: (1) one month earlier he had stopped the same truck and arrested defendant's passenger for drunk driving and

possession of marijuana; (2) during a criminal history check, the trooper discovered defendant had been previously arrested; (3) the trooper had information from a local police department that defendant was suspected of drug dealing; (4) defendant was nervous; and (5) it was late at night. *Menne v. State*, 2012 Ark. 37, — S.W.3d — (2012).

CHAPTER 85

PRETRIAL PROCEEDINGS

SUBCHAPTER 4 — INDICTMENT GENERALLY

16-85-407. Amendment of indictment and filing of bill of particulars.

CASE NOTES

ANALYSIS

Change in Nature or Degree.
Validity of Amendment.

Change in Nature or Degree.

Denial of a continuance to a defendant did not violate due process; although the information was amended the day before trial from a charge of rape of someone less than 14 years old by forcible compulsion to rape by forcible compulsion in violation of § 5-14-103(a)(1), the nature of the crime charged did not change, pursuant to subsection (b) of this section. *Green v. State*, 2012 Ark. 19, — S.W.3d — (2012).

Trial court did not erroneously allow an information charging rape by forcible compulsion and terroristic threatening to be amended on the first day of trial to add physical helplessness as an alternative means of committing rape because the amendment addressed only the manner by which the rape was committed and did not change the nature or degree of the rape charge, and defendant could not show that the amendment resulted in

prejudice through unfair surprise because he failed to move for a continuance and failed to claim surprise after he was put on notice that the State planned to amend the information. *Harris v. State*, 2012 Ark. App. 651, — S.W.3d —, 2012 Ark. App. LEXIS 765 (Nov. 14, 2012).

Validity of Amendment.

Trial court committed no error in allowing the state to orally amend the information to include the contra pacem clauses as required by Ark. Const. Art. 7, § 49 because the amendment conformed to the requirements of this section; the amendment adding the contra pacem clauses did not change the nature or degree of the crimes charged, nor did it compromise defendant's ability to make a defense, the amendment resulted in no prejudice, and defendant did not claim surprise or request a continuance after the amendment was granted. *Walker v. State*, 2012 Ark. App. 61, — S.W.3d — (2012).

Cited: *Hoyle v. State*, 2011 Ark. 321, — S.W.3d — (2011).

CHAPTER 87

PUBLIC DEFENDERS

SUBCHAPTER 2 — ARKANSAS PUBLIC DEFENDER COMMISSION

A.C.R.C. Notes. Acts 2012, No. 255, § 12, provides: “DUTIES OF DEPENDENCY-NEGLECT APPEALS ATTORNEY. The Public Defender Commission shall utilize Dependency-Neglect Appeals

Attorneys exclusively to write appeals in dependency-neglect cases.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

16-87-213. Certificate of indigency.

A.C.R.C. Notes. Acts 2012, No. 255, § 9, provides: “FEE GENERATION AND SUPPORT — COURTS. Unless specified otherwise in Arkansas Code §5-4-303(g) and Arkansas Code 16-87-213 the monies collected by the courts under the authority of §5-4-303(g) and 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

“In the event that the law requires that the fees levied under §5-4-303(g) be depos-

ited into the State Administration of Justice Fund, the State Treasurer shall transfer the amount of the fees collected each month under the authority of Arkansas Code §5-4-303(g) from the State Administration of Justice Fund to the State Central Services Fund.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

16-87-216. Juvenile Ombudsman Division.

A.C.R.C. Notes. Acts 2012, No. 218, § 10, provided: “TRANSFER OF FUNDS FOR THE JUVENILE OMBUDSMAN PROGRAM. The Department of Human Services shall provide funding in an amount not to exceed \$240,000 for the fiscal year ending June 30, 2013 for the Juvenile Ombudsman Program described in ACA 16-87-216. Upon request by the Executive Director of the Arkansas Public

Defender Commission, the Chief Fiscal Officer of the State shall transfer an amount not to exceed \$240,000 for the fiscal year ending June 30, 2013 from an account designated by the Director of the Department of Human Services to the State Central Services Fund as a direct revenue to fund the Juvenile Ombudsman Program.”

CHAPTER 88

JURISDICTION AND VENUE

SUBCHAPTER 1 — GENERAL PROVISIONS

16-88-104. Presumption of jurisdiction.

CASE NOTES

Proof.

Pursuant to this section, a trial court had jurisdiction over defendant's trial for

theft by receiving because the evidence demonstrated that, at the very least, the disposal of the stolen property occurred in

Arkansas. *Johnson v. State*, 2012 Ark. App. 615, — S.W.3d —, 2012 Ark. App. 496, — S.W.3d — (2012).
LEXIS 719 (Oct. 31, 2012). **Cited:** *Clark v. State*, 2012 Ark. App.

16-88-105. Territorial jurisdiction of certain courts generally.
[Effective until January 1, 2012.]

CASE NOTES

Venue.

Ark. R. Crim. P. 21.3 did not preclude a prosecution for second-degree sexual assault because it did not occur in the same jurisdiction and venue as other offenses; the sexual assault in Sebastian County did not arise from the same criminal episode as similar offenses charged in Crawford County, which allegedly occurred

within a span of four years. Rape was not a continuing offense, §16-88-108 did not apply because the charged offenses of sexual assault was alleged to have been committed entirely within Sebastian County, and the offenses were not related under Rule 21.3. *Bean v. State*, 2012 Ark. App. 643, — S.W.3d —, 2012 Ark. App. LEXIS 738 (Nov. 7, 2012).

16-88-108. Jurisdiction of counties — Offenses generally.

CASE NOTES

Offenses in More Than One County.

Pursuant to subsection (c) of this section, a trial court had jurisdiction over defendant's trial for theft by receiving because the evidence demonstrated that, at the very least, the disposal of the stolen property occurred in Arkansas. *Johnson v. State*, 2012 Ark. App. 615, — S.W.3d —, 2012 Ark. App. LEXIS 719 (Oct. 31, 2012).

Ark. R. Crim. P. 21.3 did not preclude a prosecution for second-degree sexual assault because it did not occur in the same jurisdiction and venue as other offenses;

the sexual assault in Sebastian County did not arise from the same criminal episode as similar offenses charged in Crawford County, which allegedly occurred within a span of four years. Rape was not a continuing offense, this section did not apply because the charged offenses of sexual assault was alleged to have been committed entirely within Sebastian County, and the offenses were not related under Rule 21.3. *Bean v. State*, 2012 Ark. App. 643, — S.W.3d —, 2012 Ark. App. LEXIS 738 (Nov. 7, 2012).

16-88-113. Jurisdiction of counties — Stolen property.

CASE NOTES

Proof.

Pursuant to subsection (A) of this section, a trial court had jurisdiction over defendant's trial for theft by receiving because the evidence demonstrated that,

at the very least, the disposal of the stolen property occurred in Arkansas. *Johnson v. State*, 2012 Ark. App. 615, — S.W.3d —, 2012 Ark. App. LEXIS 719 (Oct. 31, 2012).

CHAPTER 89

TRIAL AND VERDICT

16-89-111. Evidence generally.

CASE NOTES

ANALYSIS

Accomplice Testimony.
Corpus Delicti Rule.

Accomplice Testimony.

Independent evidence corroborated defendant's passenger's testimony that drugs in a blue glove in her pants belonged to defendant, including a letter defendant wrote to the passenger from jail asking her to change her statement and to implicate someone else in the crime and the passenger's statements to officers that she had something concealed on her body. *Owens v. Arkansas*, 2011 Ark. App. 763, — S.W.3d — (2011).

Defendant's conviction for second-degree forgery was proper considering accomplice testimony along with the other evidence, under subdivision (e)(1)(A) of this section. Although the evidence was circumstantial given that it was the accomplice, rather than defendant, who cashed the forged check, circumstantial evidence could provide the basis to sup-

port the conviction. *Benton v. State*, 2012 Ark. App. 71, — S.W.3d — (2012).

There was sufficient evidence tending to connect defendant to an aggravated robbery and thus to corroborate accomplice testimony because surveillance video established the commission of the crime and an officer testified that defendant matched the description of a robber in the video based on his height and that the officer confirmed the truth of identifying information from a non-accomplice. *Smith v. State*, 2012 Ark. App. 534, — S.W.3d — (2012).

Corpus Delicti Rule.

Substantial evidence supported defendant's convictions for capital murder, residential burglary, and theft of property because the state offered evidence to corroborate defendant's confession under subsection (d) of this section; the state presented evidence that the murder victim died at the hands of another, that a second victim's home was burglarized, and that guns were removed from the second victim's home. *Meadows v. State*, 2012 Ark. 57, — S.W.3d — (2012).

16-89-118. Conduct of jury.

CASE NOTES

Admonition.

Court did not abuse its discretion by refusing to poll jurors about an article published in the local newspaper that morning because they had promised to follow the judge's admonishment not to read anything in the morning paper, watch anything on television, or listen to

anything on the radio concerning the case. Defense counsel concurred that the court had properly instructed the jury under this section, and the judge announced that he took the jurors at their word and would not poll them. *Fields v. State*, 2012 Ark. App. 269, — S.W.3d — (2012).

16-89-122. Dismissal of indictment.**CASE NOTES****Nolle Prosequi.**

Denial of appellant's, an inmate's, petition for postconviction relief was proper because he failed to prove that he received the ineffective assistance of counsel. In part, although the inmate might have successfully quashed the amended information, he was not prejudiced by any resulting error, because the prosecutor

would have simply refiled the charges since the state's dismissal of a case by nolle prosequi did not bar a subsequent prosecution under this section; Moreover, trial counsel appeared to have made a well-reasoned tactical decision not to object to the amendment. *Hoyle v. State*, 2011 Ark. 321, — S.W.3d — (2011).

16-89-125. Deliberation of jury.**RESEARCH REFERENCES**

ALR. Propriety of Audio or Video Playback of Testimony or Statement to Jury. 65 A.L.R.6th 537.

CASE NOTES

Cited: *Padilla v. Archer*, 2011 Ark. App. 746, — S.W.3d — (2011).

CHAPTER 90**JUDGMENT AND SENTENCE GENERALLY****SUBCHAPTER.****9. EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS.****SUBCHAPTER 1 — GENERAL PROVISIONS****16-90-107. Fixing of punishment generally.****CASE NOTES****Motion to Reduce.**

Denial of appellant's, an inmate's, petition for postconviction relief was proper because he failed to prove that he received the ineffective assistance of counsel. In part, the inmate's argument that the jury's verdict imposing the maximum sentences to run consecutively was a result of

passion and prejudice is not persuasive; considering the court's ability to sua sponte reduce the sentence, the trial court did not clearly err in finding that a motion to reduce the sentence under subsection (e) of this section would have been denied. *Hoyle v. State*, 2011 Ark. 321, — S.W.3d — (2011).

16-90-111. Correction or reduction of sentence.**CASE NOTES****Considered as a Petition for Postconviction Relief.**

Inmate's appeal of the denial of the inmate's petition to correct an illegal sentence, pursuant to this section, was dismissed because (1) Ark. R. Crim. P. 37.2(b) said all postconviction relief grounds cognizable under Ark. R. Crim. P. 37.1 had to be raised in a Rule 37.1 petition filed within 90 days of the date of judgment when a defendant pled guilty, even though this section let a trial court correct an illegal sentence at any time, as the statute

was superseded to the extent the statute conflicted with the Rule's time limits, (2) the petition was filed over six years after judgment was entered, (3) the time limits in Ark. R. Crim. P. 37.2 were jurisdictional, denying a trial court jurisdiction if the time limits were not met, and, on appeal, a reviewing court, and (4) the inmate's sentence was within the prescribed statutory ranges in §§ 5-4-501(b)(2)(A) and 5-4-401(b)(1). *Redus v. State*, 2013 Ark. 9, — S.W.3d —, 2013 Ark. LEXIS 15 (Jan. 17, 2013).

16-90-120. Felony with firearm.**CASE NOTES****ANALYSIS**

Appeal.

Sentencing.

Appeal.

In a murder case, the trial court did not err in allowing the state to amend the information on the morning of trial to include a felony-firearm enhancement. Because the charge defendant was tried for was contained in the original information, the reviewing court failed to see how defendant was unfairly surprised or otherwise prejudiced by the amended infor-

mation. *Plessy v. State*, 2012 Ark. App. 74, — S.W.3d — (2012).

Sentencing.

Where defendant was convicted of multiple offenses and sentenced to 240 months for committing a terroristic act and 192 months for domestic battery, the enhancement of his sentence on both charges by 144 months pursuant to this section did not result in his sentence being enhanced twice for using a deadly weapon because the use of a firearm was not an element the prosecution had to prove to obtain his convictions. *King v. State*, 2012 Ark. App. 94, — S.W.3d — (2012).

16-90-121. Second or subsequent felony with firearm.**CASE NOTES****Good Time Credits.**

Because § 12-29-201, changing how meritorious good-time credit was applied, did not impliedly repeal the language in this section (the deadly-weapon enhancement statute applicable at the time of an

inmate's sentence), the inmate's 30-year sentence for first-degree murder was subject to reduction by meritorious good-time credit at the conclusion of the first 10 years of the sentence. *Hobbs v. Baird*, 2011 Ark. 261, — S.W.3d — (2011).

16-90-122. Post-conviction release of nonviolent offenders.

CASE NOTES

Applicability.

Because defendant was not “in custody” at the time defendant violated the conditions of defendant’s release on bond under subdivision (a)(2) of this section, the cir-

cuit court erred in denying defendant’s motion for directed verdict on defendant’s conviction for second-degree escape under § 5-54-111(a)(2). *Magness v. State*, 2012 Ark. 16, — S.W.3d — (2012).

SUBCHAPTER 2 — MULTIPLE CONVICTIONS

16-90-201. Punishment for second or subsequent convictions generally.

CASE NOTES

ANALYSIS

Construction.

Procedure Generally.

Construction.

Circuit court erred in sentencing defendant under this section because the statute was repealed by implication with the enactment of § 5-4-501, and the effect of sentencing defendant under this section was prejudicial since there was the possibility that the jury would have returned a sentence less than the minimum set forth in this section; because sentencing had to be determined by the law in effect at the time of the commission of a crime, defendant was entitled to a jury instruction in accordance with the Criminal Code’s habitual-offender statute, § 5-4-501. *Glaze v. State*, 2011 Ark. 464, — S.W.3d — (2011).

General Assembly clearly took up the subject matter of the enhanced sentencing of habitual offenders anew in the more current statute, § 5-4-501, and the conflict between this section and § 5-4-501 is irreconcilable, resulting in a repeal by implication of this section; a plain reading of §§ 5-4-501 and this section makes clear that § 5-4-501 is the more comprehensive statute, covering the same subject matter as this section as well as including additional provisions to provide for the sentencing of habitual offenders who are con-

victed of serious and violent felonies, and it is further evident that the two statutes cannot be read together harmoniously, as the two statutes cannot be read together harmoniously, as the sentencing ranges prescribed by each statute conflict. *Glaze v. State*, 2011 Ark. 464, — S.W.3d — (2011).

Procedure Generally.

Circuit court did not err in sentencing defendant as a habitual offender because there was no error in the form of the amended felony information; the amended felony information incorporated by reference the charges included in the original information and quoted the habitual-offender statute, and that was sufficient to alert defendant to the fact that he could be sentenced as a habitual offender and that his prior convictions could be considered in assessing an enhanced sentence. *Glaze v. State*, 2011 Ark. 464, — S.W.3d — (2011).

There was no error in the timing of the amendment of the felony information because the amendment did not change the nature of the crime charged, and there was no basis for concluding that defendant was unfairly surprised by the state’s amended felony information; prior to the filing of the amended felony information, defendant received a certified copy of the judgment and commitment order convicting him of three prior felonies. *Glaze v. State*, 2011 Ark. 464, — S.W.3d — (2011).

SUBCHAPTER 6 — EXPUNGEMENT OF RECORD**16-90-601. Minor felony offenders subsequently pardoned for offense.****RESEARCH REFERENCES**

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1. Judicial Expunction of Criminal Record

of Convicted Adult Under Statute-Expunction Under Statutes Addressing “First Offenders” and “Innocent Persons,” Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi*, Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

16-90-602. Minor nonviolent felony offenders — Petition.**RESEARCH REFERENCES**

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1. Judicial Expunction of Criminal Record

of Convicted Adult Under Statute-Expunction Under Statutes Addressing “First Offenders” and “Innocent Persons,” Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi*, Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

16-90-603. Minor felony offenders — Expungement of record.**RESEARCH REFERENCES**

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1. Judicial Expunction of Criminal Record

of Convicted Adult Under Statute-Expunction Under Statutes Addressing “First Offenders” and “Innocent Persons,” Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi*, Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

SUBCHAPTER 7 — CRIME VICTIMS REPARATIONS

16-90-717. Crime Victims Reparations Revolving Fund.

A.C.R.C. Notes. Acts 2012, No. 281, § 61, provided: “YEARLY FUND TRANSFERS. On July 1, 2010 and each July 1, thereafter, if the fund balance of the Crime Victims Reparation Revolving Fund falls below one million dollars (\$1,000,000), the Chief Fiscal Officer of the State may transfer on his or her books and those of the State Treasurer and the Auditor of the State a sum not to exceed one million dollars (\$1,000,000) or so much thereof as is available from fund

balances that exceed seven million dollars (\$7,000,000) as determined by the Chief Fiscal Officer of the State, from the State Administration of Justice Fund to the Crime Victims Reparations Revolving Fund to provide funds for personal services, operating expenses and claims for the Office of the Attorney General — Crime Victims Reparations Program.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 9 — EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS

SECTION.

16-90-904. Procedure for sealing of records.

16-90-901. Definition.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult in Absence of Authorizing Statute. 68 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing “First Offenders” and “Innocent Persons,” Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi*, Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

16-90-902. Effect of expungement.

CASE NOTES

ANALYSIS

In General.
Attorney Discipline.

In General.

Trial court did not err by admitting defendant’s prior conviction for felony possession of drug paraphernalia into evidence as proof on a charge of possession of

a firearm by a felon (FIP) because § 5-73-103(a)(1) specifically provided that defendant’s expunged felony conviction could be used as proof on his FIP charge; although still uncodified, 1995 Ark. Acts. 595, § 1 indicates legislative intent for an expunged felony conviction to remain a conviction for the purposes of possession of a firearm by a felon. *Smith v. State*, 2011 Ark. App. 539, — S.W.3d — (2011).

Attorney Discipline.

Circuit court's order to dismiss the attorney's conviction and to seal the record of the criminal proceeding was not binding on the Arkansas Supreme Court for purposes of the disciplinary proceeding against the attorney because the court

could not be bound by an expungement order made pursuant to a legislative enactment when engaged in its constitutional mandate to regulate and discipline attorneys at law. *Ligon v. Davis*, 2012 Ark. 440, — S.W.3d —, 2012 Ark. LEXIS 470 (Nov. 29, 2012).

16-90-904. Procedure for sealing of records.

(a)(1) An individual who is eligible to have an offense expunged may file a uniform petition to seal records, as described in § 16-90-905, in the circuit court or district court in the county where the crime was committed and in which the person was convicted for the offense he or she is now petitioning to have expunged.

(2)(A) Unless the court is presented with and finds that there is clear and convincing evidence that a misdemeanor conviction should not be expunged under this subchapter, the court shall expunge the misdemeanor conviction for a person after the person files a petition as described in this section, except for the following offenses:

(i) Negligent homicide, § 5-10-105, if it was a Class A misdemeanor;

(ii) Battery in the third degree, § 5-13-203;

(iii) Indecent exposure, § 5-14-112;

(iv) Public sexual indecency, § 5-14-111;

(v) Sexual assault in the fourth degree, § 5-14-127;

(vi) Domestic battering in the third degree, § 5-26-305; or

(vii) Driving while intoxicated, § 5-65-103.

(B) An offense listed in subdivisions (a)(2)(A)(i)-(vii) of this section:

(i) May be expunged after a period of five (5) years has elapsed since the completion of the person's sentence for that conviction; and

(ii) Shall be expunged after the period of time required in subdivision (a)(2)(B)(i) of this section unless the court is presented with and finds that there is clear and convincing evidence that the misdemeanor conviction should not be expunged under this subchapter.

(b)(1)(A) A copy of the uniform petition for sealing of the record shall be served upon the prosecuting authority for the county in which the petition is filed, the arresting agency, and any city court or district court where the individual appeared before the transfer of the case to circuit court.

(B) It shall not be necessary to make any agency a party to the action.

(2)(A) Any person desiring to oppose the sealing of the record shall file a notice of opposition with the court setting forth reasons within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date.

(B) If no opposition is filed, the court may grant the petition.

(C) If notice of opposition is filed, the court shall set the matter for a hearing.

(c) If the court determines that the record should be sealed, the uniform order, as described in § 16-90-905, shall be entered and filed with the circuit clerk.

(d) The circuit clerk shall certify copies of the uniform order to the prosecuting attorney who filed the underlying charges, the arresting agency, any city court or district court where the individual appeared before the transfer of the case to circuit court, the Administrative Office of the Courts, and the Arkansas Crime Information Center.

(e)(1) The circuit clerk and the clerk of any city court or district court where the individual appeared before the transfer of the case to circuit court shall remove all petitions, orders, docket sheets, and documents relating to the case, place them in a file, and sequester them in a separate and confidential holding area within the clerk's office.

(2)(A) A docket sheet shall be prepared to replace the sealed docket sheet.

(B) The replacement docket sheet shall contain the docket number, a statement that the case has been sealed, and the date that the order to seal the record was issued.

(3) All indices to the file of the individual with a sealed record shall be maintained in a manner to prevent general access to the identification of the individual.

(f) Upon notification of an order to seal records, all circuit clerks, city clerks, district clerks, arresting agencies, and other criminal justice agencies maintaining such conviction records in a computer-generated database shall either segregate the entire record into a separate file or ensure by other electronic means that the sealed record shall not be available for general access unless otherwise authorized by law.

History. Acts 1995, No. 998, § 7; 2009, No. 477, § 1; 2011, No. 626, § 3.

Publisher's Notes. This section is be-

ing set out to reflect a correction to a reference in (a)(2)(B).

16-90-905. Uniform petition and order to seal records.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult in Absence of Authorizing Statute. 68 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing "First Offenders" and "Innocent Persons," Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi*, Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

CASE NOTES**ANALYSIS**

**Attorney Discipline.
Review.**

Attorney Discipline.

Circuit court's order to dismiss the attorney's conviction and to seal the record of the criminal proceeding was not binding on the Arkansas Supreme Court for purposes of the disciplinary proceeding against the attorney because the court could not be bound by an expungement order made pursuant to a legislative en-

actment when engaged in its constitutional mandate to regulate and discipline attorneys at law. *Ligon v. Davis*, 2012 Ark. 440, — S.W.3d —, 2012 Ark. LEXIS 470 (Nov. 29, 2012).

Review.

Circuit court erred by sealing the applicant's conviction for negligent-homicide pursuant to § 5-10-105, because given the plain meaning of § 5-10-105, the statute lacked any provision for expungement. *State v. Martin*, 2012 Ark. 191, — S.W.3d — (2012).

**SUBCHAPTER 12 — ENCOURAGEMENT OF TREATMENT AND REHABILITATION OF
DRUG USERS****16-90-1201. Expungement of record.****CASE NOTES****Expungement of Prior Felony.**

Trial court did not err by admitting defendant's prior conviction for felony possession of drug paraphernalia into evidence as proof on a charge of possession of a firearm by a felon (FIP) because § 5-73-103(a)(1) specifically provided that defendant's expunged felony conviction could be

used as proof on his FIP charge; although still uncoded, 1995 Ark. Acts. 595, § 1 indicates legislative intent for an expunged felony conviction to remain a conviction for the purposes of possession of a firearm by a felon. *Smith v. State*, 2011 Ark. App. 539, — S.W.3d — (2011).

CHAPTER 91**APPEAL AND POST-CONVICTION****SUBCHAPTER 1 — APPEAL****16-91-101. Right generally.****CASE NOTES****Appealable Judgments.**

Because the plain language of Ark. R. App. P. Crim. 1(a) and subsection (a) of this section required a conviction before a defendant had a right of appeal, and because a disposition pursuant to Act 346 of

1975, better known as the Arkansas First Offender Act, §§ 16-93-301 — 16-93-305, was not a conviction, defendant had no right to appeal. *Lynn v. State*, 2012 Ark. 6, — S.W.3d — (2012).

CHAPTER 93

PROBATION AND PAROLE

SUBCHAPTER 2 — PAROLE BOARD

16-93-208. Services and equipment.

A.C.R.C. Notes. Acts 2012, No. 137, § 3, provided: “ASSISTANCE PROVIDED. The Department of Correction and the Department of Community Correction may provide services, furnishings, equipment and office space to assist the Parole

Board in fulfilling the purposes for which the Board was created by law.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 3 — PROBATION AND SUSPENDED IMPOSITION OF SENTENCE

16-93-303. Probation — First time offenders — Procedure.

CASE NOTES

Disposition Not a Conviction.

Because the plain language of Ark. R. App. P. Crim. 1(a) and § 16-91-101(a) required a conviction before a defendant had a right of appeal, and because a disposition pursuant to Act 346 of 1975, better

known as the Arkansas First Offender Act, §§ 16-93-301 — 16-93-305, was not a conviction, defendant had no right to appeal. *Lynn v. State*, 2012 Ark. 6, — S.W.3d — (2012).

16-93-307. Probation generally — Revocation hearings.

CASE NOTES

ANALYSIS

Right to Confrontation
Sufficiency of the Evidence.
Waiver.

Right to Confrontation

Any right to confrontation error in allowing fingerprint evidence in a suspended sentence revocation hearing without presenting the witness who took the fingerprints was harmless because there was live testimony from a homeowner who caught defendant in the act of a burglary and who identified him as the burglar. *Reynolds v. State*, 2012 Ark. App. 705, — S.W.3d —, 2012 Ark. App. LEXIS 822 (Dec. 12, 2012).

Sufficiency of the Evidence.

Because defendant failed to timely object to the admission of certain testimony, and because the circuit court was charged

with resolving all questions of conflicting testimony and inconsistent evidence, pursuant to former §§ 5-4-309(d) and 5-4-310(c)(2), a preponderance of the evidence supported the revocation of defendant's probation. *Ellis v. State*, 2011 Ark. App. 654, — S.W.3d — (2011).

Where the State filed a petition to revoke defendant's probation for residential burglary alleging he violated the conditions of his probation by failing to pay fines, costs, and fees, failing to report to his probation officer, and providing of a false address to his probation officer, the trial court conducted his hearing pursuant to subsection (b) of this section; a county employee testified that he did not pay his fines, costs, and fees, and defendant's probation officer testified that he failed to report and did not live at the address he provided. The evidence was sufficient to support the trial court's decision revoking probation. *Foster v. State*,

2013 Ark. App. 2, — S.W.3d —, 2013 Ark. App. LEXIS 9 (Jan. 16, 2013).

Waiver.

On appeal of the decision revoking defendant's suspended sentence for burglary, his argument that the trial court erred by failing to provide a reason for the revocation as required by subdivision

(b)(5) of this section was not preserved for review because he failed to object. *Love v. State*, 2012 Ark. App. 600, — S.W.3d —, 2012 Ark. App. LEXIS 705 (Oct. 24, 2012).

Cited: *Richards v. State*, 2013 Ark. App. 15, — S.W.3d —, 2013 Ark. App. LEXIS 21 (Jan. 16, 2013).

16-93-308. Probation generally — Revocation.

CASE NOTES

ANALYSIS

Revocation Proper.

Sentence After Revocation.

Sexual-Offender Registration.

Sufficiency of the Evidence.

Revocation Proper.

Probation was properly revoked under subsection (d) of this section because, even setting aside alleged fine delinquencies and a misdemeanor conviction, appellant violated the conditions of his probation that prohibited him from possessing or using alcohol or illegal drugs. *Pfeifer v. State*, 2012 Ark. App. 556, — S.W.3d — (2012).

Sentence After Revocation.

Argument that appellant's due process rights under Ark. Const. Art. 2, § 8 were violated when a trial court failed to consider all of the sentencing options available after a revocation of probation was not preserved for appellate review because the argument was not raised when appellant was sentenced. *Mewborn v. State*, 2012 Ark. App. 195, — S.W.3d — (2012).

In a case where probation was revoked, a 20-year sentence for Class B felony kidnapping was not improper since it was authorized under § 5-4-401(a)(3); the appellate court was unable to reduce a sentence within the range of punishment contemplated by the Arkansas Legislature. Moreover, since appellant failed to object to the sentence imposed, he was unable to argue on appeal that the trial court erred by failing to consider alternatives to the 20-year sentence. *Pfeifer v. State*, 2012 Ark. App. 556, — S.W.3d — (2012).

Sexual-Offender Registration.

Trial court did not clearly err in finding that defendant made no effort to comply with sexual-offender registration requirements. Therefore, the trial court properly revoked defendant's suspended sentence. *Muldrew v. State*, 2012 Ark. App. 568, — S.W.3d — (2012).

Sufficiency of the Evidence.

Because defendant failed to timely object to the admission of certain testimony, and because the circuit court was charged with resolving all questions of conflicting testimony and inconsistent evidence, pursuant to §§ 5-4-309(d) and 5-4-310(c)(2), a preponderance of the evidence supported the revocation of defendant's probation. *Ellis v. State*, 2011 Ark. App. 654, — S.W.3d — (2011).

Because the trial court's finding that appellant failed to report to his probation officer was not clearly against the preponderance of the evidence as the probation officer testified that if appellant had in fact reported on August 10 it would be reflected in his records, revocation of his probation was proper under subsection (d) of this section. *Major v. State*, 2012 Ark. App. 501, — S.W.3d — (2012).

Trial court revoked defendant's suspended sentence for burglary based on allegations that he failed to paying his court-ordered fees, did not notify the sheriff of his current address, and committed new criminal offenses; at the revocation hearing, a county employee testified that defendant did not make any payments toward his \$700 bill for costs and the court also heard testimony indicating that defendant shot a man seven times. Defendant did not challenge the sufficiency of the evidence supporting the revocation of his suspended sentence under subsection

(d) of this section. *Love v. State*, 2012 Ark. App. 600, — S.W.3d —, 2012 Ark. App. LEXIS 705 (Oct. 24, 2012).

Sufficient evidence supported the trial court's decision to revoke defendant's probation for residential burglary because he and a county employee testified that he did not pay his fines, costs, and fees as directed. Although defendant testified that he did not have a job or any income, the trial court did not err in revoking his probation because he did not provide a reasonable excuse under subsection (d) of this section for his failure to comply with his probation conditions. *Foster v. State*, 2013 Ark. App. 2, — S.W.3d —, 2013 Ark. App. LEXIS 9 (Jan. 16, 2013).

Revocation of defendant's probation was proper under this section because defendant admitted to drinking alcohol

and failing to report to his probation officer. Any argument that the trial court's findings were against the preponderance of the evidence would clearly be without merit; because of that, counsel's motion to be relieved as counsel under Ark. Sup. Ct. & Ct. App. R. 4-3 was properly granted. *Martin v. State*, 2013 Ark. App. 7, — S.W.3d —, 2013 Ark. App. LEXIS 11 (Jan. 16, 2013).

Trial court did not err under subsection (d) of this section in revoking defendant's probation for possession of a controlled substance; defendant admittedly failed to abide by the terms of probation, particularly with respect to an obligation to report to the probation officer in person. *Lanfair v. State*, 2013 Ark. App. 51, — S.W.3d —, 2013 Ark. App. LEXIS 61 (Jan. 30, 2013).

16-93-309. Probation generally — Revocation hearing — Sentence alternatives.

CASE NOTES

Sentence After Revocation.

Argument that appellant's due process rights under Ark. Const. Art. 2, § 8 were violated when a trial court failed to consider all of the sentencing options available after a revocation of probation was

not preserved for appellate review because the argument was not raised when appellant was sentenced. *Mewborn v. State*, 2012 Ark. App. 195, — S.W.3d — (2012).

16-93-311. Probation generally — Restitution.

CASE NOTES

Jurisdiction.

Court retained jurisdiction to revoke the suspended sentence for failure to pay restitution, because the petitioner was charged with fleeing to avoid arrest for possession of marijuana and causing prop-

erty damage while fleeing, and was ordered to pay restitution for the damage he caused during the course of the criminal episode. *Arter v. State*, 2012 Ark. App. 327, — S.W.3d — (2012).

SUBCHAPTER 6 — PAROLE — ELIGIBILITY

16-93-609. Effect of more than one conviction for certain felonies.

CASE NOTES

Cited: *Smith v. Hobbs*, 2012 Ark. 360, — S.W.3d — (2012).

16-93-611. [Repealed.]**CASE NOTES****ANALYSIS**

Constitutionality.
Applicability.

Constitutionality.

This section (repealed in 2011), which was amended to repeal a sunset provision of a rule requiring inmates convicted of manufacturing methamphetamine to serve at least 70 percent of their sentences before being eligible for parole, was constitutional under Ark. Const. Art. 5, § 23, because the constitutional provision referred only to enactment of laws by refer-

ence to their titles and did not prohibit repeal of laws by reference to their titles. *Rowe v. Hobbs*, 2012 Ark. 244, — S.W.3d — (2012).

Applicability.

Counsel was not ineffective for failing to challenge the constitutionality and effect of the 70 percent law; the status of defendants' parole eligibility was immaterial to whether the decision reached by the jury would have been different absent the alleged errors, which was the standard under *Strickland*. *Myers v. State*, 2012 Ark. 143, — S.W.3d — (2012).

SUBCHAPTER 12 — COMMUNITY PUNISHMENT**16-93-1201. Findings and determinations.****CASE NOTES**

Cited: *Arnold v. State*, 2011 Ark. 395, — S.W.3d — (2011).

16-93-1207. Order of court.**CASE NOTES****ANALYSIS**

Construction.
Advisory Opinion.

Construction.

In a case in which appellant challenged the denial of his petition to seal the record in his 1997 theft-of-property case, the Supreme Court declined to engage in an interpretation of the 1997 version of this section, where appellant failed to object below to the application of the 2011 version and failed to raise any arguments on appeal in relation to the 1997 version.

Sullivan v. State, 2012 Ark. 178, — S.W.3d — (2012).

Advisory Opinion.

In a case in which appellant challenged the denial of his petition to seal the record in his 1997 theft-of-property case, the Supreme Court declined to address the arguments that were raised by appellant in relation to the 2011 version of this section, because to do so would be to issue an advisory opinion on a version of the statute that had no application to the instant case. *Sullivan v. State*, 2012 Ark. 178, — S.W.3d — (2012).

CHAPTER 94
EXTRADITION

SUBCHAPTER 2 — UNIFORM CRIMINAL EXTRADITION ACT

16-94-216. Bail.

RESEARCH REFERENCES

ALR. Allowance of Bail in International Extradition Proceedings. 60 A.L.R. Fed. 2d 203.

CHAPTER 95
INTERSTATE AGREEMENT ON DETAINERS

16-95-101. Agreement on Detainers.

RESEARCH REFERENCES

ALR. Construction and Application of Article III of Interstate Agreement on Detainers (IAD) — Issues Related to “Speedy Trial” Requirement, and Construction of Essential Terms. 70 A.L.R.6th 361.

Construction and Application of Article III of Interstate Agreement on Detainers (IAD): Issues Related to Certificate, Request by Defendant for Disposition, and “Anti-Shuttling” Provision. 71 A.L.R.6th

335.

Construction and Application of Article III of Interstate Agreement on Detainers (IAD): Issues Related To Custody, Duties of Prison Officials, Waiver of Extradition, Escape, Assistance of Counsel, and Necessity of Hearing. 72 A.L.R.6th 141.

CHAPTER 97
SENTENCING

16-97-101. Bifurcated sentencing procedures.

CASE NOTES

ANALYSIS

Alternative Sentences.
Right of Confrontation.

Alternative Sentences.

During defendant’s trial for theft by receiving and theft of property, the court did not err under subdivision (4) of this section in refusing to give defendant’s proffered jury instruction on the availability of probation as an alternative sentence because it gave the request for the in-

struction more than proper consideration; after previously completing a drug program, defendant had once again become involved with known felons. *Malone v. State*, 2012 Ark. App. 280, — S.W.3d — (2012).

Right of Confrontation.

Right of confrontation guaranteed by U.S. Const. Amend. VI and Ark. Const. Art. II, § 10 extends to a defendant’s sentencing proceeding before a jury. To the extent *Wallace v. State*, 2010 Ark. App.

706, 2010 Ark. App. LEXIS 748, conflicted with this holding, it was overruled. *Vankirk v. State*, 2011 Ark. 428, — S.W.3d — (2011).

Where defendant pled guilty to rape and elected to be sentenced by a jury in a bifurcated proceeding, the trial court

erred in admitting a videotaped statement of the child rape victim during the sentencing proceeding, because this violated defendant's right of confrontation under U.S. Const. Amend. VI and Ark. Const. Art. II, § 10. *Vankirk v. State*, 2011 Ark. 428, — S.W.3d — (2011).

16-97-103. Evidence.

CASE NOTES

ANALYSIS

Admissibility.

Character Evidence.

Jury Instructions.

Victim Impact Evidence.

Admissibility.

Upon defendant's conviction for rape and second-degree battery, he argued that the admission of evidence of his prior alleged misconduct involving a minor during the sentencing phase of trial violated his rights under the Confrontation Clause; however, the error was not preserved for review. Pursuant to this section, certain evidence was admissible at sentencing that would not have been admissible at the guilt phase of a trial, and if defendant did not wish for this evidence to come in during sentencing, he should have raised an objection. *White v. State*, 2012 Ark. 221, — S.W.3d — (2012).

Court did not abuse its discretion by allowing into evidence the transcript of chats between defendant and the officer, whom defendant believed to be a 14-year old female, because the transcript was the best method for the court to gauge the veracity of defendant's attempts to downplay his activities and contained much relevant information not found in the agreed statement of facts; in this section, Arkansas Legislature listed several other types of evidence that could be considered, including evidence relevant to guilt presented at the first stage. *Howerton v. State*, 2012 Ark. App. 331, — S.W.3d — (2012).

In an aggravated robbery case, a trial court did not abuse its discretion by admitting evidence at sentencing of appellant's participation in a prior robbery; it was of no consequence that appellant had not yet been convicted in the robbery at

issue. As to relevance, the fact that appellant was an active participant in two robberies, just days apart and committed in nearly the same fashion, was relevant character evidence and was evidence of aggravated circumstances showing his propensity to engage in similar criminal conduct. *Thomas v. State*, 2012 Ark. App. 466, — S.W.3d — (2012).

Character Evidence.

After defendant was convicted of second-degree sexual assault, a woman was properly allowed to testify at the sentencing hearing that he had raped her nine years earlier, as other crime evidence that might not be admissible at the guilt phase under Ark. R. Evid. 404(b) was admissible at sentencing under subdivision (5) of this section as relevant evidence of defendant's character that the jury could consider in determining the appropriate sentence. *McElroy v. State*, 2011 Ark. App. 533, — S.W.3d — (2011).

Although the testimony of the three witnesses regarding prior incidents involving defendant did not involve kidnapping, given the similarities between the events, including missing underwear, deceptive tactics to gain entry into a witness's home, use of a latex glove, and his use of a pellet gun and his threat to attack another witness's husband, under Ark. R. Evid. 401 and subdivision (5) of this section, the trial court did not abuse its discretion in admitting the testimony at the sentencing phase of the trial. *Huff v. State*, 2012 Ark. 388, — S.W.3d — (2012).

Jury Instructions.

In an aggravated robbery case where habitual offender status was at issue, a trial court did not err by refusing to give the jury an instruction on the sentences that appellant had received in federal court for prior bank robbery convictions

because it was within the trial court's discretion to do so, pursuant to subdivision (2) of this section. *Walden v. State*, 2012 Ark. App. 307, — S.W.3d — (2012).

Victim Impact Evidence.

Testimony of the chairman of a non-profit group's board about the group's response to a flooding disaster, the resulting funerals, and the chairman's personal re-

lationships with the bereaved was relevant victim-impact evidence under Ark. R. Evid. 402 and this section at defendant's sentencing hearing as although the group was able to meet the disaster victims' needs, the testimony illustrated the difficulties the group experienced due to defendant's theft; the evidence was not unduly prejudicial. *Brown v. State*, 2011 Ark. App. 608, — S.W.3d — (2011).

SUBTITLE 7. PARTICULAR PROCEEDINGS AND REMEDIES

CHAPTER 106

ACTIONS BY OR AGAINST STATE

SUBCHAPTER 2 — PRISONERS — COURT ACTIONS

16-106-202. Premature, frivolous, or malicious lawsuits.

CASE NOTES

Application.

Petitioner failed to show that the circuit court erred when it determined his habeas petition was a civil action that constituted one strike for purposes of § 16-68-607, because this section had no application to § 16-68-607, and did apply, when the cir-

cuit court correctly found that the petition for writ of habeas corpus failed to state a claim upon which relief could be granted and the petition did constitute a strike for purposes of that section. *McArty v. Hobbs*, 2012 Ark. 257, — S.W.3d — (2012).

CHAPTER 108

ARBITRATION AND AWARD

SUBCHAPTER 2 — UNIFORM ARBITRATION ACT

16-108-201. Definitions.

CASE NOTES

Insurance.

Circuit court did not err in denying an insurer's motion to compel arbitration in insurers' action alleging breach of an insurance contract because the McCarran-Ferguson Act, 15 U.S.C.S. §§ 1011 et seq., did not allow the Federal Arbitration Act (FAA), 9 U.S.C.S. §§ 1-16, to preempt this section, the Arkansas Uniform Arbitration Act, which prohibited arbitration under the facts; application of the FAA to enforce

the arbitration agreement between the parties would invalidate the operation of subdivision (b)(2) of this section. *Southern Pioneer Life Ins. Co. v. Thomas*, 2011 Ark. 490, — S.W.3d — (2011).

Subdivision (b)(2) of this section, the Arkansas Uniform Arbitration Act, regulates the business of insurance by exempting arbitration agreements in insurance contracts from enforcement, and subdivision (b)(2) regulates insurance within the

meaning of the McCarran-Ferguson Act, 15 U.S.C.S. §§ 1011 et seq.; subdivision (b)(2), affects policyholder risk by transferring or spreading the risk by introducing the possibility of jury verdicts into the process for resolving disputed claims, it regulates an integral part of the relationship between an insurer and insured by invalidating an otherwise mandatory insurance-contract term that would allow

either party to compel arbitration of disputes arising thereunder, and it is not limited to entities within the insurance industry as it also exempts tort and employment claims from arbitration. *Southern Pioneer Life Ins. Co. v. Thomas*, 2011 Ark. 490, — S.W.3d — (2011).

Cited: *Nisha, LLC v. Tribuilt Constr. Group, LLC*, 2012 Ark. 130, — S.W.3d — (2012).

16-108-202. Notice.

CASE NOTES

Cited: *Nisha, LLC v. Tribuilt Constr. Group, LLC*, 2012 Ark. 130, — S.W.3d — (2012).

16-108-203. When subchapter applies.

CASE NOTES

Cited: *Nisha, LLC v. Tribuilt Constr. Group, LLC*, 2012 Ark. 130, — S.W.3d — (2012).

16-108-205. Application for judicial relief.

CASE NOTES

Representation.

Nonlawyer's representation of a corporation in arbitration proceedings constitutes the unauthorized practice of law. Arbitration proceedings bear significant indicia of legal proceedings under the Uniform Arbitration Act, which has been ad-

opted by Arkansas, and if a hearing is held during arbitration, the parties have the right to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing. *Nisha, LLC v. Tribuilt Constr. Group, LLC*, 2012 Ark. 130, — S.W.3d — (2012).

16-108-211. Appointment of arbitrator — Service as a neutral arbitrator.

CASE NOTES

Cited: *Nisha, LLC v. Tribuilt Constr. Group, LLC*, 2012 Ark. 130, — S.W.3d — (2012).

16-108-212. Disclosure by arbitrator.**CASE NOTES**

Cited: Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, — S.W.3d — (2012).

16-108-213. Action by majority.**CASE NOTES**

Cited: Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, — S.W.3d — (2012).

16-108-222. Confirmation of award.**CASE NOTES****Res Judicata.**

Application of res judicata to an arbitration award, although unconfirmed under this section and § 16-108-223(b), was proper to bar investors' action against an investment firm, as the award was en-

titled to preclusive effect where the elements of res judicata were satisfied. *Elsner v. Kalos Fin. Servs., Inc.*, 2012 Ark. App. 639, — S.W.3d —, 2012 Ark. App. LEXIS 746 (Nov. 7, 2012).

16-108-223. Vacating award.**CASE NOTES****Res Judicata.**

Application of res judicata to an arbitration award, although unconfirmed under § 16-108-222 and subdivision (b) of this section, was proper to bar investors' action against an investment firm, as the award

was entitled to preclusive effect where the elements of res judicata were satisfied. *Elsner v. Kalos Fin. Servs., Inc.*, 2012 Ark. App. 639, — S.W.3d —, 2012 Ark. App. LEXIS 746 (Nov. 7, 2012).

16-108-228. Appeals.**CASE NOTES**

Cited: HPD, LLC v. Tetra Techs., Inc., 2012 Ark. 408, — S.W.3d —, 2012 Ark. LEXIS 427 (Nov. 1, 2012).

16-108-230. Savings clause — Certain actions excluded.**CASE NOTES****Employer-Employee Dispute.**

Trial court did not err in refusing to compel arbitration with respect to a former employer's breach-of-contract actions

against former employees because this section, the Arkansas Uniform Arbitration Act, expressly excluded employer-employee disputes, and the only arbitration

clause was found in an employment agreement that had expired three years earlier but the employer made no claim based on the employment agreement; rather, the employer based the breach-of-contract

claims on a merger agreement and a covenant not to compete agreement, which unambiguously did not provide for arbitration. *Phillippy v. ANB Fin. Servs., LLC*, 2011 Ark. App. 639, — S.W.3d — (2011).

CHAPTER 111

DECLARATORY JUDGMENTS

16-111-101. Definition.

CASE NOTES

Justiciable Controversy.

Doctor who had allowed his Arkansas medical license to lapse did not have standing to obtain a judgment declaring that § 17-95-409(b) did not apply to contracts under the Community Match Loan and Scholarship Program, established un-

der §§ 6-81-715 to 6-81-717, because the Declaratory Judgment Statute, § 16-111-101 et seq., was applicable only where there was a present actual controversy. *Nelson v. Ark. Rural Med. Practice Loan & Scholarship Bd.*, 2011 Ark. 491, — S.W.3d — (2011).

16-111-102. Legislative declaration — Purpose — Construction.

CASE NOTES

No Existing Legal Controversy.

Court did not err in concluding that the business was not entitled to declaratory relief, because there was no existing legal controversy, when the business sought a declaration that its conduct (sweepstakes promotion) was legal and not subject to prosecution, and it was apparent the busi-

ness was seeking an advisory opinion rather than the resolution of an actual controversy; courts did not sit for the purpose of determining speculative and abstract questions of law or laying down rules for future conduct. *Cancun Cyber Cafe & Bus. Ctr., Inc. v. City of N. Little Rock*, 2012 Ark. 154, — S.W.3d — (2012).

16-111-104. Right to determination generally.

CASE NOTES

Justiciable Controversy.

Because the operator failed to present a justiciable controversy under this section, the declaratory judgment in its favor was not proper; the requested declaratory relief regarding any alleged due-process violations, which were based upon the lack of a hearing, was moot, and the circuit court erred in granting the operator's motion for summary judgment. *Ark. Dep't of Human Servs. v. Civitan Ctr., Inc.*, 2012 Ark. 40, — S.W.3d — (2012).

Court did not err in concluding that the business was not entitled to declaratory relief, because there was no existing legal controversy, when the business sought a

declaration that its conduct (sweepstakes promotion) was legal and not subject to prosecution, and it was apparent the business was seeking an advisory opinion rather than the resolution of an actual controversy; courts did not sit for the purpose of determining speculative and abstract questions of law or laying down rules for future conduct. *Cancun Cyber Cafe & Bus. Ctr., Inc. v. City of N. Little Rock*, 2012 Ark. 154, — S.W.3d — (2012).

Circuit court's determination that Ark. Code Ann. §§ 25-19-104 and 25-19-106 were unconstitutional was improper because declaratory relief was inappropriate under this section as appellees did not yet

have a case or controversy ready for decision by the courts. Appellees received a legal opinion on the effects of certain provisions of the state's Freedom of Informa-

tion Act rather than resolution of an actual controversy. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, — S.W.3d —, 2012 Ark. LEXIS 485 (Dec. 6, 2012).

16-111-106. Parties.

CASE NOTES

Counterclaim.

When appellant law firm nonsuited its Freedom of Information Act claim under § 25-19-105, the circuit court did not err in permitting appellees, several doctors, an attorney, and a hospital, to move for-

ward on their counterclaim. Under Ark. R. Civ. P. 41(a)(3), a defendant has the right to pursue a counterclaim even though the plaintiff has dismissed its original claim. *Harrill & Sutter, PLLC v. Farrar*, 2012 Ark. 180, — S.W.3d — (2012).

CHAPTER 112
HABEAS CORPUS

SUBCHAPTER 1 — APPEALS — NEW SCIENTIFIC EVIDENCE

16-112-101. Procedure.

CASE NOTES

ANALYSIS

Writ Denied.
Written Findings.

Writ Denied.

Appellant sentenced to 540 months' incarceration for manufacturing a controlled substance, two counts of possession of drug paraphernalia with the intent to manufacture methamphetamine, and failure to appear was not entitled to proceed with an appeal of the decision denying his petition for writ of habeas corpus pursuant to §§ 16-112-101 to 16-112-123, because his allegations did not establish that the commitment was facially invalid; and his ineffective assistance of counsel and due process claims were not cognizable in a petition for writ of habeas corpus. The trial court was not without jurisdiction to accept appellant's guilty plea for the charges of possession of drug

paraphernalia with intent to manufacture methamphetamine, as it was not a lesser-included offense of manufacturing methamphetamine. *McHaney v. Hobbs*, 2012 Ark. 361, — S.W.3d — (2012).

Trial court did err in denying appellant's petition for writ of habeas corpus pursuant to §§ 16-112-101 to 16-101-123, because he did not establish that the trial court lacked jurisdiction by virtue of a defective information. *Murry v. Hobbs*, 2013 Ark. 29, — S.W.3d —, 2013 Ark. LEXIS 40 (Jan. 31, 2013).

Written Findings.

Circuit court committed no error if it did not make written findings to support its decision denying appellant's petition for a writ of habeas corpus because the statutes relating to habeas-corpus proceedings that were not filed under Act 1780 contained no such requirement. *Bradford v. State*, 2011 Ark. 494, — S.W.3d — (2011).

16-112-103. Petition.**CASE NOTES****ANALYSIS**

Denial of Petition.
Petition Denied Without Hearing.
Sufficiency of Petition.

Denial of Petition.

Circuit court did not err in denying appellant's petition for a writ of habeas corpus because to the extent that appellant would directly challenge his conviction, the sentence that he received for the conviction had since expired; to the extent that appellant would raise the issue of validity of his sentence concerning its use to enhance his life sentence in his prior conviction, he failed to raise a claim that would support relief. *Bradford v. State*, 2011 Ark. 494, — S.W.3d — (2011).

Circuit court did not err in denying appellant's petition for a writ of habeas corpus because his claims that some of the judgments used to enhance his sentence were invalid did not constitute a challenge to the jurisdiction of the trial court over the charge or to the facial validity of the commitment order; therefore, appellant failed to present a claim that would support habeas corpus relief. *Bradford v. State*, 2011 Ark. 494, — S.W.3d — (2011).

Circuit court did not err in denying appellant's petition for a writ of habeas corpus because although appellant argued that he was still being held by the Arkansas Department of Correction (ADC), even though his conviction was reversed on appeal, the ADC's records did not reflect that appellant was incarcerated pursuant to his conviction; appellant's challenge to the conviction, even if it was valid at the time the petition was filed, was moot because any judgment rendered would have no practical legal effect upon an existing legal controversy. *Bradford v. State*, 2011 Ark. 494, — S.W.3d — (2011).

Denial of writ of habeas corpus was proper, because allegations of ineffective assistance of counsel were not cognizable in a habeas proceeding, none of the claims called into question the trial court's jurisdiction or the validity of the judgment-and-commitment order, and neither the question concerning the validity of the

agreement between the petitioner and his attorney for representation nor the assertions of trial error were sufficient to warrant granting the writ. *Thomas v. State*, 2012 Ark. 79, — S.W.3d — (2012).

Petitioner was not entitled to mandamus relief (seeking a ruling on the motion for extension of time to lodge the record on appeal), because the petitioner filed his petition to vacate and or to set aside the judgment in the circuit court nearly five years after the date of his conviction. Subdivision (10)(B) of this section mandated that there shall be a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction and since the DNA testing was available at the time of his trial, the petitioner's attempt to rebut the presumption against timeliness failed, and nothing in the record suggested that the prosecuting attorney was properly served and the petition for writ of mandamus did not allege that the prosecuting attorney was served. *Mitchael v. State*, 2012 Ark. 256, — S.W.3d — (2012).

Dismissal of the petition for writ of habeas corpus was proper, because the applicant did not present a claim that could be resolved through a habeas proceeding, when the issue was one concerning an excessive sentence and not an illegal sentence, and the majority of the applicant's claims were assertions of trial error that did not implicate the facial validity of the judgment or the jurisdiction of the trial court. *Bliss v. Hobbs*, 2012 Ark. 315, — S.W.3d — (2012).

Defendant argued that he was not told, prior to entering his guilty plea, that this section would apply to his sentence, however, he failed to show how this allegation would make the judgment against him facially invalid or to support his claim to believe that he was illegally detained under subdivision (a)(1) of this section, all claims of ineffective assistance had to be brought under a timely Ark. R. Crim. P. 37.1 petition, and a petition for writ of habeas corpus was not a substitute for a timely petition for postconviction relief. *Smith v. Hobbs*, 2012 Ark. 360, — S.W.3d — (2012).

Appellant sentenced to 540 months' incarceration for manufacturing a controlled substance, two counts of possession of drug paraphernalia with the intent to manufacture methamphetamine, and failure to appear was not entitled to proceed with an appeal of the decision denying his petition for writ of habeas corpus, because his allegations did not call into question the trial court's jurisdiction or establish that the commitment was facially invalid under subdivision (a)(1) of this section. The trial court was not without jurisdiction to accept appellant's guilty plea for the charges of possession of drug paraphernalia with intent to manufacture methamphetamine, as it was not a lesser-included offense of manufacturing methamphetamine. *McHaney v. Hobbs*, 2012 Ark. 361, — S.W.3d — (2012).

Appellant filed a petition for writ of habeas corpus that challenged the judgment that imposed an aggregate sentence of 1080 months' imprisonment for possession of cocaine with intent to deliver and possession of marijuana with intent to deliver. The trial court did not err by denying appellant's petition, because he failed to provide probable cause that he was illegally detained as required by subdivision (a)(1) of this section and presented only conclusory allegations to support his claim that his sentence was improperly enhanced using an out-of-state conviction. *Darrough v. State*, 2013 Ark. 28, — S.W.3d —, 2013 Ark. LEXIS 32 (Jan. 31, 2013).

Trial court did err in denying appellant's petition for writ of habeas corpus pursuant to §§ 16-112-101 to 16-101-123, because he did not establish that the trial court lacked jurisdiction under subdivision (a)(1) of this section by virtue of a defective information. *Murry v. Hobbs*, 2013 Ark. 29, — S.W.3d —, 2013 Ark. LEXIS 40 (Jan. 31, 2013).

Petition Denied Without Hearing.

Circuit court did not err by failing to conduct a hearing when it denied appellant's writ of habeas corpus petition because appellant failed to demonstrate probable cause for the issuance of the writ pursuant to subdivision (A)(1) of this section; the records of the Arkansas Department of Correction did not reflect that appellant was incarcerated pursuant to his conviction, and appellant's challenge to the conviction, even if it was valid at the time the petition was filed, was moot because any judgment rendered would have no practical legal effect upon an existing legal controversy. *Bradford v. State*, 2011 Ark. 494, — S.W.3d — (2011).

Sufficiency of Petition.

Because defendant raised no argument that demonstrated a jurisdictional defect in the proceeding against defendant or that defendant's commitment was invalid, defendant did not state a basis to warrant issuance of a writ of habeas corpus under subdivision (a)(1) of this section; consequently, the circuit court did not err in denying the relief sought. *Randolph v. State*, 2011 Ark. 510, — S.W.3d — (2011).

SUBCHAPTER 2 — OTHER RELIEF — NEW SCIENTIFIC EVIDENCE

16-112-201. Writ of Habeas Corpus — New scientific evidence.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

CASE NOTES

ANALYSIS

Denial of Petition.
Relief Denied.
Scientific Evidence.

Denial of Petition.

Dismissal of the petition for writ of habeas corpus was proper, because the applicant did not present a claim that could be resolved through a habeas pro-

ceeding, when the issue was one concerning an excessive sentence and not an illegal sentence, and the majority of the applicant's claims were assertions of trial error that did not implicate the facial validity of the judgment or the jurisdiction of the trial court. *Bliss v. Hobbs*, 2012 Ark. 315, — S.W.3d — (2012).

Relief Denied.

Appellant convicted and sentenced to 300 months' imprisonment for rape did not prove a basis for a writ of habeas corpus under this section with his claim that he had new scientific evidence to prove his innocence because his assertions did not challenge the jurisdiction of the court or the facial validity of the judgment-and-commitment order. *Girley v. Hobbs*, 2012 Ark. 447, — S.W.3d —, 2012 Ark. LEXIS 471 (Nov. 29, 2012).

Scientific Evidence.

Whether or not the court correctly determined identity was not at issue as required to grant a motion for testing under § 16-112-202, appellant, an inmate, was not entitled to relief. More fundamentally, he failed to show a basis to commence a proceeding for the writ under either basis set out in subsection (a) of this section. *Guy v. State*, 2011 Ark. 305, — S.W.3d — (2011).

Denial of appellant's, an inmate's, peti-

tion for habeas corpus under §§ 16-112-201 to 16-112-208 was appropriate because he had sought and received DNA testing, the results of which were inconclusive and the Arkansas State Crime Laboratory did not have a duty to perform, or direct to be performed, additional mitochondrial DNA testing, § 16-112-208(b). *Pitts v. State*, 2011 Ark. 322, — S.W.3d — (2011).

Petitioner was not entitled to mandamus relief (seeking a ruling on the motion for extension of time to lodge the record on appeal), because the petitioner filed his petition to vacate and or to set aside the judgment in the circuit court nearly five years after the date of his conviction. Section 16-112-202(10)(B) mandated that there shall be a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction and since the DNA testing was available at the time of his trial, the petitioner's attempt to rebut the presumption against timeliness failed, and nothing in the record suggested that the prosecuting attorney was properly served and the petition for writ of mandamus did not allege that the prosecuting attorney was served. *Mitchael v. State*, 2012 Ark. 256, — S.W.3d — (2012).

Cited: *Hill v. State*, 2012 Ark. 204, — S.W.3d — (2012).

16-112-202. Form of motion.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Gov-

erning Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

CASE NOTES

ANALYSIS

Petition Denied and Dismissed.
Scientific Testing.
Time Limitations.

Petition Denied and Dismissed.

Petitioner was not entitled to mandamus relief (seeking a ruling on the motion for extension of time to lodge the record on appeal), because the petitioner filed his petition to vacate and or to set aside the judgment in the circuit court nearly five years after the date of his conviction.

Subdivision (10)(B) of this section mandated that there shall be a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction and since the DNA testing was available at the time of his trial, the petitioner's attempt to rebut the presumption against timeliness failed, and nothing in the record suggested that the prosecuting attorney was properly served and the petition for writ of mandamus did not allege that the prosecuting attorney was served. *Mitchael v. State*, 2012 Ark. 256, — S.W.3d — (2012).

Scientific Testing.

Whether or not the court correctly determined identity was not at issue as required to grant a motion for testing under this section, appellant, an inmate, was not entitled to relief. More fundamentally, he failed to show a basis to commence a proceeding for the writ under either basis set out in § 16-112-201(a). *Guy v. State*, 2011 Ark. 305, — S.W.3d — (2011).

Time Limitations.

Under subdivision (10)(B) of this section, there was a rebuttable presumption of untimeliness for a petition for DNA testing filed more than 36 months after a conviction. The circuit court correctly determined that the petition was untimely because the petition failed to establish any of the enumerated grounds for rebut-

ting the presumption. *Cooper v. State*, 2012 Ark. 123, — S.W.3d — (2012).

Trial court did not err in dismissing defendant's petition for postconviction relief because defendant's petition failed to establish the required rebuttal of the presumption of untimeliness, pursuant to subdivision (10)(B) of this section, and, therefore, failed to provide a basis for the court to assume jurisdiction under §§ 16-112-201 to 16-112-208. *Hill v. State*, 2012 Ark. 204, — S.W.3d — (2012).

Habeas corpus petitioner failed to rebut the presumption against timeliness pursuant to subdivision (10)(B) of this section; while petitioner alleged that petitioner was placed in administrative segregation, no other reference was made to the nearly five years that elapsed between petitioner's conviction and the filing of the petition. *Garner v. State*, 2012 Ark. 271, — S.W.3d — (2012).

16-112-205. Hearing.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Gov-

erning Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

16-112-208. Testing procedures.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Gov-

erning Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

CASE NOTES

Relief Properly Denied.

Denial of appellant's, an inmate's, petition for habeas corpus under §§ 16-112-201 to 16-112-208 was appropriate because he had sought and received DNA testing, the results of which were inconclusive and the Arkansas State Crime

Laboratory did not have a duty to perform, or direct to be performed, additional mitochondrial DNA testing under subsection (b) of this section. *Pitts v. State*, 2011 Ark. 322, — S.W.3d — (2011).

Cited: *Hill v. State*, 2012 Ark. 204, — S.W.3d — (2012).

CHAPTER 114

MALPRACTICE ACTIONS

SUBCHAPTER 2 — ACTIONS FOR MEDICAL INJURY

16-114-201. Definitions.

CASE NOTES

Medical Injury.

Summary judgment was properly awarded to a hospital in an action by appellants for negligent credentialing of a surgeon because the Arkansas Medical Malpractice Act, subdivision (3) of this section, did not confer a cause of action for

negligent credentialing as a “medical injury;” credentialing decisions did not involve a professional service, a doctor’s treatment or order, or a matter of medical science related to specific patient care. *Paulino v. QHG of Springdale, Inc.*, 2012 Ark. 55, — S.W.3d — (2012).

16-114-202. Applicability.

CASE NOTES

Medical Injury.

Summary judgment was properly awarded to a hospital in an action by appellants for negligent credentialing of a surgeon because the Arkansas Medical Malpractice Act did not confer a cause of action for negligent credentialing as a

“medical injury;” credentialing decisions did not involve a professional service, a doctor’s treatment or order, or a matter of medical science related to specific patient care. *Paulino v. QHG of Springdale, Inc.*, 2012 Ark. 55, — S.W.3d — (2012).

16-114-203. Statute of limitations.

CASE NOTES

Actions Not Barred.

Trial court erred by disregarding a nunc pro tunc order entered in the probate court appointing appellants as co-special administrators, effective before the wrongful death action was filed, as: (1) the nunc pro tunc order gave appellants standing under § 16-62-102(b) to bring the wrongful death action; (2) the statute of limitations under subsection (a) of this section did not bar the wrongful death

action; (3) by choosing to ignore the nunc pro tunc order, the trial court effectively invalidated the order, which was beyond its jurisdiction to do; and (4) the case did not involve the relation back doctrine under Ark. R. Civ. P. 15. *Smith v. Rebsamen Med. Ctr., Inc.*, 2011 Ark. App. 722, — S.W.3d — (2011).

Cited: *Baylark v. Helena Reg’l Med. Ctr.*, 2012 Ark. 405, — S.W.3d —, 2012 Ark. LEXIS 446 (Nov. 1, 2012).

16-114-206. Burden of proof.**CASE NOTES****ANALYSIS**

Constitutionality.
Expert Testimony.
Informed Consent.

Constitutionality.

Because the language, "By means of expert testimony provided only by a medical care provider of the same specialty as the defendant" in subsection (a) of this section adds requirements to Ark. R. Evid. 702, attempts to dictate procedure, and invades the province of the judiciary's authority to set and control procedure, it violates the separation-of-powers doctrine, Ark. Const. Amend. 80, § 3, and the inherent authority of the courts to protect the integrity of proceedings and the rights of the litigants. *Broussard v. St. Edward Mercy Health Sys.*, 2012 Ark. 14, — S.W.3d — (2012).

Expert Testimony.

Trial court erred in ruling that § 16-114-207(3) was unconstitutional; the stat-

ute simply created a privilege for purposes of trial. It gave medical care providers, or their representatives, the privilege to refuse to testify as to the matters set forth in this section. *Bedell v. Williams*, 2012 Ark. 75, — S.W.3d — (2012).

Informed Consent.

Genuine issues of material fact remained as to whether a hospital was negligent in failing to obtain a patient's informed consent for the administration of spinal-block anesthesia prior to surgery, because the patient signed a blank form, with no information as to the anesthesia to be used, while he was under the influence of pain medication. *Villines v. N. Ark. Reg'l Med. Ctr.*, 2011 Ark. App. 506, — S.W.3d — (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 688 (Ark. Ct. App. Oct. 26, 2011).

16-114-207. Expert witnesses.**CASE NOTES****ANALYSIS**

Constitutionality.
Qualified to Testify.

Constitutionality.

Trial court erred in ruling that subdivision (3) of this section was unconstitutional; the statute simply created a privilege for purposes of trial. It gave medical care providers, or their representatives, the privilege to refuse to testify as to the matters set forth in § 16-114-206. *Bedell v. Williams*, 2012 Ark. 75, — S.W.3d — (2012).

Qualified to Testify.

In a medical malpractice action against a nursing home, the court erred in ruling that subdivision (3) of this section did not apply to the nurses because they did not testify against themselves, but rather against their employer; only those medical professionals employed by an entity, such as physicians and nurses, could be called upon to give expert medical testimony against the entity itself under the meaning of subdivision (3). *Bedell v. Williams*, 2012 Ark. 75, — S.W.3d — (2012).

CHAPTER 116

PRODUCTS LIABILITY

SUBCHAPTER 1 — GENERAL PROVISIONS

16-116-102. Definitions.

CASE NOTES

Product Liability Action.

Appellants' warrant claims were barred by the limitations period of the Arkansas Product Liability Act, § 16-116-103, instead of the limitations period of the Uniform Commercial Code, § 4-2-725, because a claim for the costs of repairing the

buses with corroded flooring would be a claim for property damage within the meaning of the Act, under subdivision (5) of this section. *IC Corp. v. Hoover Treated Wood Prods.*, 2011 Ark. App. 589, — S.W.3d — (2011).

16-116-103. Limitation on actions.

CASE NOTES

ANALYSIS

Actions Barred.
Breach of Warranty.
Running of Statute.

Actions Barred.

Circuit court did not err in granting appellees' motion for summary on the ground that appellants' claims were barred by this section, the Arkansas Product Liability Act, because there was no genuine issue of material fact regarding appellants' awareness of corrosion problems and its causal connection to alkaline copper quaternary (ACQ) and treated plywood more than three years before it filed its complaint; the statute of limitations could begin to run even though appellant could not have known the full extent of the damage caused by the ACQ, and the Act covered all of appellants' claims, including those based on warranty. *IC Corp. v. Hoover Treated Wood Prods.*, 2011 Ark. App. 589, — S.W.3d — (2011).

Breach of Warranty.

Appellants' warrant claims were barred by the limitations period of the Arkansas Product Liability Act instead of the limitations period of the Uniform Commercial Code, § 4-2-725, because a claim for the costs of repairing the buses with corroded flooring would be a claim for property damage within the meaning of the Act, § 16-116-102(5). *IC Corp. v. Hoover Treated Wood Prods.*, 2011 Ark. App. 589, — S.W.3d — (2011).

Running of Statute.

Court of appeals did not need to decide whether appellants' claims for "economic loss" were covered by the Uniform Commercial Code, § 4-2-725, instead of this section, the Arkansas Product Liability Act, because appellants failed to plead or present evidence as to its lost profits or lost goodwill, matters that had to be specifically pled under Ark. R. Civ. P. 9(g). *IC Corp. v. Hoover Treated Wood Prods.*, 2011 Ark. App. 589, — S.W.3d — (2011).

CHAPTER 118
MISCELLANEOUS ACTIONS

16-118-107. Civil action by crime victim.

CASE NOTES

Recovery Permitted.

Plaintiff may recover under this section where (1) defendants made misrepresentations to plaintiffs with the intent of collecting the commitment fees; and (2) accepting the allegations in the Complaint

as true, defendants received the commitment fees with the purpose of depriving plaintiff of its money. *Terra Renewal, LLC v. McCarthy*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 94935 (E.D. Ark. July 10, 2012).

CHAPTER 123
CIVIL RIGHTS

SUBCHAPTER 1 — THE ARKANSAS CIVIL RIGHTS ACT OF 1993

16-123-101. Title.

CASE NOTES

ANALYSIS

In General.
Burden Shifting.
Pretext.

In General.

College, which was a community college, was an agency of the state and, thus, enjoyed Eleventh Amendment, U.S. Const. Amend. XI, sovereign immunity from the teacher's lawsuit against it alleging race discrimination and retaliation claims for not renewing the teaching contract of the teacher. As a result, the teacher's claims under Title V of the Americans with Disabilities Act, 42 U.S.C.S. § 12201 et seq., 42 U.S.C.S. § 1981 and 42 U.S.C.S. § 1983, and the Arkansas Civil Rights Act, § 16-123-101 et seq., had to be dismissed as claims against the state, but the teacher could still maintain an action under Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq. *Reed v. College of the Ouachitas*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 56227 (W.D. Ark. Apr. 23, 2012).

City was not entitled to summary judgment on employee's claim under the Arkansas Civil Rights Act, § 16-123-101 et

seq., for failure to promote her on account of race, because the trial court failed to engage in the burden-shifting analysis required by *McDonnell-Douglas*. Additionally, the trial court erred in characterizing her failure to promote claim as a constructive discharge claim. *Brodie v. City of Jonesboro*, 2012 Ark. 5, — S.W.3d — (2012).

Burden Shifting.

Summary judgment was improperly granted in a case alleging violations of the Americans with Disabilities Act and the Arkansas Civil Rights Act, §§16-123-101 to -108, because the trial court should have used the *McDonnell Douglas* burden-shifting analysis and explained its findings. *Johnson v. Windstream Com-muns., Inc.*, 2012 Ark. App. 590, — S.W.3d —, 2012 Ark. App. LEXIS 708 (Oct. 24, 2012).

Pretext.

Terminated employee's race discrimination claims failed because the employer stated that it discharged the employee for failing to follow a supervisor's directive, and the employee did not show pretext since nineteen youth care workers were not valid comparators because they had

different immediate supervisors from the employee and did not engage in the same conduct as the employee, and the employee's allegations of shifting explanations amounted to nothing more than a seman-

tic dispute as to whether the employer's ultimatum to resign or be fired was a resignation or a termination. *Bone v. G4s Youth Servs.*, — F.3d —, 2012 U.S. App. LEXIS 15663 (8th Cir. July 30, 2012).

16-123-107. Discrimination offenses.

CASE NOTES

Racial Discrimination.

Employee's racial discrimination claim based on failure to promote failed because (1) the employer allegedly selected the other applicant based on, inter alia, experience, interview answers, and connections to government agencies, and (2) the employee failed to show pretext based on the employee's qualifications compared to the chosen applicant, false and shifting explanations for the decision, and other instances of discrimination. *Barber v. C1 Truck Driver Training, LLC*, 656 F.3d 782 (8th Cir. 2011).

Employee's racial discrimination claim based on the employee's termination for insubordination failed because the employee did not show pretext based on, inter alia, allegations regarding disparate disciplinary treatment of several other employees who were not similarly situated, a supervisor's treatment of the em-

ployee, and the employer's explanations for the decision. *Barber v. C1 Truck Driver Training, LLC*, 656 F.3d 782 (8th Cir. 2011).

Plaintiff cardiologist's comparators were not similarly situated to him, and he failed to provide any evidence giving rise to an inference that a defendant hospital association, executive officer, and other doctors racially discriminated against him in violation of 42 U.S.C.S. § 1981 and the Arkansas Civil Rights Act, or conspired to discriminate against him in violation of 42 U.S.C.S. §1985(3), when they revoked his hospital privileges based on plaintiff's behavior toward hospital staff, his poor record of patient care, and his failure to maintain proper medical records. *Davis v. Jefferson Hosp. Ass'n*, — F.3d —, 2012 U.S. App. LEXIS 14243 (8th Cir. July 12, 2012).

16-123-108. Retaliation — Interference — Remedies.

CASE NOTES

ANALYSIS

Adverse Employment Action.

Causal Link.

Pretext.

Supervisor.

Adverse Employment Action.

Retaliation claim filed by plaintiff, a new zoning official, against defendant city employer, failed because a written warning did not threaten termination or any other employment-related harm, as the employee had suffered no loss of pay, reduction in hours or responsibilities, or exclusion from other opportunities, and further, a prior discipline for similar misconduct weakened any inference that the warning was considered "materially ad-

verse." *Hill v. City of Pine Bluff*, — F.3d —, 2012 U.S. App. LEXIS 21256 (8th Cir. Oct. 15, 2012).

Causal Link.

Assuming that plaintiff cardiologist engaged in protected conduct when he complained about other physicians' bias and racial discrimination to administrators, the only evidence for which was cited in his complaint, plaintiff failed to establish a causal connection between the complaint in 2005 and the ultimate revocation of his hospital privileges in 2007, and thus, his claim of retaliation under 42 U.S.C.S. § 1981 and the Arkansas Civil Rights Act failed as a matter of law. *Davis v. Jefferson Hosp. Ass'n*, — F.3d —, 2012 U.S. App. LEXIS 14243 (8th Cir. July 12, 2012).

Pretext.

Employee’s retaliation claim based on failure to promote and the employee’s termination for insubordination failed because the employee did not show pretext since, inter alia, the proximity of the promotion decision to the employee’s statement that the employee would file a discrimination charge if not promoted was not probative of pretext. *Barber v. C1 Truck Driver Training, LLC*, 656 F.3d 782 (8th Cir. 2011).

Supervisor.

In a case involving the Arkansas Civil Rights Act, § 16-123-101 et seq., a default judgment was not set aside under Ark. R. Civ. P. 55 because a motion for an exten-

sion was not timely where the request was not made to a trial court before the expiration of the period originally prescribed, the failure to respond in a timely manner due to one attorney being distracted by the birth of a child was not excusable neglect, an amendment to Ark. R. Civ. P. 12 was inapplicable, and an argument that the complaint failed to state a claim was rejected. The denial of illegal intent was insufficient in a first affidavit, a second affidavit was filed after the default was granted, and an individual supervisor could have been held personally liable for alleged acts of retaliation under subsection (a) of this section. *Eusanio v. Tippin*, 2013 Ark. App. 38, — S.W.3d —, 2013 Ark. App. LEXIS 47 (Jan. 30, 2013).

TITLE 17

**PROFESSIONS, OCCUPATIONS, AND
BUSINESSES**

SUBTITLE 1. PROFESSIONS GENERALLY

CHAPTER 1

GENERAL PROVISIONS

17-1-103. Registration, certification, and licensing for criminal offenders.

CASE NOTES

Attorney Discipline.

Circuit court’s order to dismiss the attorney’s conviction and to seal the record of the criminal proceeding was not binding on the Arkansas Supreme Court for purposes of the disciplinary proceeding against the attorney because the court

could not be bound by an expungement order made pursuant to a legislative enactment when engaged in its constitutional mandate to regulate and discipline attorneys at law. *Ligon v. Davis*, 2012 Ark. 440, — S.W.3d —, 2012 Ark. LEXIS 470 (Nov. 29, 2012).

SUBTITLE 2. NONMEDICAL PROFESSIONS**CHAPTER 11
ABSTRACTERS****SUBCHAPTER 4 — ARKANSAS ABSTRACTERS' BOARD****17-11-403. Duties and powers.**

A.C.R.C. Notes. Acts 2012, No. 47, § 3, provided: "PROFESSIONAL FEES. The appropriation made available in the Professional Fees Line Item of this Act shall be made available to the board for the purpose of contracting an independent or

private investigator to perform any investigative task as needed or may be required by law. Abstracter Board members may not act as investigators nor do investigative work required by the board."

**CHAPTER 14
APPRAISERS****SUBCHAPTER 3 — LICENSING RESTRICTIONS****17-14-305. Compliance with uniform standards and code of ethics — Seals — Licensing and certification documents.****CASE NOTES**

Cited: Chandler v. Ark. Appraiser Licensing & Certification Bd., 2011 Ark. 519, — S.W.3d — (2011).

**CHAPTER 19
BAIL BONDSMEN****SUBCHAPTER 1 — GENERAL PROVISIONS****17-19-106. Professional Bail Bond Company and Professional Bail Bondsman Licensing Board.**

A.C.R.C. Notes. Acts 2012, No. 182, § 4, provided: "FUND TRANSFER. The Professional Bail Bondsman Licensing Board, at the end of each fiscal year, shall transfer all but twenty-five percent (25%)

of its fund balance to the General Revenue Fund Account in the State Treasury.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 3 — BOND REQUIREMENTS — POSTING OF BONDSMEN LIST**17-19-301. Premiums.**

A.C.R.C. Notes. Acts 2012, No. 255, § 10, provides: “FEE GENERATION AND SUPPORT — BAIL BOND FEES.

Unless specified otherwise in Arkansas Code §17-19-301(e) the monies collected by each bail bond company under the authority of §17-19-301(e) shall be deposited into the State Treasury to the credit of the Public Defender User Fees Fund within the State Central Services Fund.

“Of the fee collected by each licensed professional bail bond company, three dollars (\$3.00) shall be transferred to the various Counties for the sole purpose of defraying the operating expenses of the local public defenders’ office. The remain-

ing monies collected shall be used to defray operating expenses of the Commission.

“On a quarterly basis, from the Bail Bond-County Public Defender line item, the Commission shall remit to each County its portion of the three dollars (\$3.00) per bail bond fee collected based upon the formula used for state aid for counties. This formula is as follows: 75% of the money is distributed equally to all 75 Counties and the remaining 25% is distributed per capita.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 25**CONTRACTORS****SUBCHAPTER 1 — GENERAL PROVISIONS****17-25-101. Definition.****CASE NOTES****Contractor.**

Appellant excavating company fell under the definition of “contractor” as set forth in subdivision (a)(1) of this section, because the work described in the contracts at issue -- demolition, fill work, cut work, excavation -- was encompassed by at least one of the categories of the statute listed as construction, erection, alteration, demolition, or repair. Thus, § 17-25-103(d) was applicable and appellant was barred from enforcing the contracts because appellant did not have a valid Arkansas contractor’s license when it entered into the contracts. *J & J Excavating v. Doyne Constr. Co.*, 2012 Ark. App. 142, — S.W.3d — (2012).

Summary judgment dismissal of the

contractor’s suit was proper, because the contractor’s construction of a natural-gas pipeline wherein space was leased fell squarely within the ambit of the statutory definition of contractor in subdivision (a)(1) of this section, and § 17-25-103(d) did not violate Ark. Const. Art. II, § 13, when the statute did not abrogate the right of all contractors to bring suit, but denied that right only to those contractors who did not possess a license; as designed to protect the public, the statute advanced the goal of providing an incentive for contractors to undergo the licensing process to ensure that the standards set by the licensing board were satisfied. *Cent. Okla. Pipeline, Inc. v. Hawk Field Servs., LLC*, 2012 Ark. 157, — S.W.3d — (2012).

17-25-103. Penalties — Enforcement.**CASE NOTES****ANALYSIS**

Applicability.

Right to Sue.

Applicability.

Appellant excavating company fell under the definition of “contractor” as set forth in § 17-25-101(a)(1), because the work described in the contracts at issue -- demolition, fill work, cut work, excavation -- was encompassed by at least one of the categories of the statute listed as construction, erection, alteration, demolition, or repair. Thus, subsection (d) of this section was applicable and appellant was barred from enforcing the contracts because appellant did not have a valid Arkansas contractor’s license when it entered into the contracts. *J & J Excavating v. Doyne Constr. Co.*, 2012 Ark. App. 142, — S.W.3d — (2012).

Right to Sue.

Summary judgment dismissal of the contractor’s suit was proper, because the contractor’s construction of a natural-gas pipeline wherein space was leased fell squarely within the ambit of the statutory definition of contractor in § 17-25-101(a)(1), and subsection (d) of this section did not violate Ark. Const. Art. II, § 13, when the statute did not abrogate the right of all contractors to bring suit, but denied that right only to those contractors who did not possess a license; as designed to protect the public, the statute advanced the goal of providing an incentive for contractors to undergo the licensing process to ensure that the standards set by the licensing board were satisfied. *Cent. Okla. Pipeline, Inc. v. Hawk Field Servs., LLC*, 2012 Ark. 157, — S.W.3d — (2012).

SUBCHAPTER 3 — LICENSING**17-25-313. License requirements to accompany invitation to bid.****CASE NOTES****No Private Right of Action.**

Summary judgment dismissal of the contractor’s suit was proper, because the contractor’s construction of a natural-gas pipeline wherein space was leased fell squarely within the ambit of the statutory definition of contractor in § 17-25-101(a)(1), and § 17-25-103(d) did not violate Ark. Const. Art. II, § 13, when the statute did not abrogate the right of all contractors to bring suit, but denied that right only to those contractors who did not possess a license; to hold that a contractor

could collect from an architect or engineer compensation that it could not otherwise recover would circumvent the clear intent of the statutory bar, thus, the Arkansas Supreme Court discerned no legislative intent for a private cause of action to arise under this section, and since there was no private right of action, it followed that a party could not be held vicariously liable for an alleged failure of its employees to give notice under the statute. *Cent. Okla. Pipeline, Inc. v. Hawk Field Servs., LLC*, 2012 Ark. 157, — S.W.3d — (2012).

CHAPTER 29

EMBALMERS, FUNERAL DIRECTORS, AND FUNERAL ESTABLISHMENTS

SUBCHAPTER 2 — EMBALMERS AND FUNERAL DIRECTORS LAW — STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

17-29-211. Administrative activities.

A.C.R.C. Notes. Acts 2012, No. 73, § 3, provided: “PERSONAL SERVICES. The Burial Association Board Executive Secretary and the Burial Association Board Administrative Specialist III shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Association Board an amount equal to one-half (½) of the salary

of the Burial Association Board Executive Secretary, up to one-half (½) of the salary of the Burial Association Board Administrative Specialist III, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 37

PEST CONTROL SERVICES

SUBCHAPTER 2 — LICENSING

17-37-210. Bond and insurance requirements.

CASE NOTES

Suit Against Surety Proper.

Trial court erred in granting a surety's motion to dismiss a homeowner's complaint pursuant to Ark. R. Civ. P. 12(b)(6) because the homeowner alleged that a pest control company furnished to the

Arkansas State Plant Board a bond issued by the surety on the company's behalf. *Russenberger v. Thomas Pest Control, Inc.*, 2012 Ark. App. 86, — S.W.3d — (2012).

SUBTITLE 3. MEDICAL PROFESSIONS**CHAPTER 95****PHYSICIANS AND SURGEONS****SUBCHAPTER 3 — ARKANSAS MEDICAL PRACTICES ACT — ARKANSAS STATE MEDICAL BOARD****17-95-310. Medical Director of Arkansas State Medical Board — Qualifications.**

A.C.R.C. Notes. Acts 2012, No. 85, § 5, provided: “DIRECTOR QUALIFICATIONS AND LIMITATIONS. The Director of the State Medical Board shall:

“(a) have been in full-time clinical practice of medicine in direct patient care within one (1) year of filling the position of Medical Director;

“(b) have fifteen (15) years of current continuous full-time medical service immediately prior to the date of appointment which shall include, but not be limited to,

at least ten (10) years of full-time clinical practice in direct patient care, five (5) years of which shall have been in full-time clinical practice in direct patient care in the State of Arkansas;

“(c) have not served on the Arkansas State Medical Board within the past five (5) years; and

“(d) have a comprehensive knowledge of the contemporary, broad-based clinical practice of medicine with experience in direct patient care.”

SUBCHAPTER 4 — ARKANSAS MEDICAL PRACTICES ACT — LICENSING**17-95-409. Denial, suspension, or revocation — Grounds.****CASE NOTES****Standing.**

Doctor who had allowed his Arkansas medical license to lapse did not have standing to obtain a judgment declaring that subsection (b) of this section did not apply to contracts under the Community Match Loan and Scholarship Program,

established under §§ 6-81-715 to 6-81-717, because the Declaratory Judgment Statute, § 16-111-101 et seq., was applicable only where there was a present actual controversy. *Nelson v. Ark. Rural Med. Practice Loan & Scholarship Bd.*, 2011 Ark. 491, — S.W.3d — (2011).

17-95-410. Denial, suspension, or revocation — Proceedings.**RESEARCH REFERENCES**

ALR. Pretrial Discovery in Disciplinary Proceedings Against Physician. 65 A.L.R.6th 295.

CHAPTER 97

PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS

SUBCHAPTER 3 — LICENSING

17-97-309. Fees.

A.C.R.C. Notes. Acts 2012, No. 219, § 17, provided: “AUTISM TREATMENT AND COORDINATION. The Department of Human Services — Division of Developmental Disabilities Services shall promulgate rules and regulations regarding the licensure and oversight of Applied Behavior Analysts as described in Arkan-

sas Code § 23-99-418. The rules and regulations shall include a requirement for a licensure application fee equal to that charged to applicants to be licensed as a psychologist as described in Arkansas Code § 17-97-309. Proceeds from this fee are declared as cash funds.”

CHAPTER 100

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SUBCHAPTER 2 — BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

17-100-202. Powers and duties.

A.C.R.C. Notes. Acts 2012, No. 35, § 4, provided: “INVESTIGATOR. The Board of Examiners in Speech-Language Pathology and Audiology shall contract with an outside investigator, as needed, to perform investigations and conduct inspections of alleged wrongdoing. The duties of the investigator hired shall include, but not be limited to, investigation and inspection of all complaints as determined by the

Board, to determine whether or not any persons have

“(1) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

“(2) Otherwise violated the practice act or rules and regulations of the Speech-Language Pathology and Audiology Board.”

TITLE 18

PROPERTY

SUBTITLE 4. MORTGAGES AND LIENS

CHAPTER.

- 48. MISCELLANEOUS LIENS ON PERSONAL PROPERTY.
- 50. STATUTORY FORECLOSURES.

SUBTITLE 2. REAL PROPERTY**CHAPTER 11****REAL PROPERTY INTERESTS GENERALLY****SUBCHAPTER 1. — OWNERSHIP AND POSSESSION****18-11-102. Payment of taxes on unimproved or unenclosed land deemed possession.****CASE NOTES****Possession.**

Trial court's conclusions that an adjoining landowner claimed land as its own and that it was the owner of the land by adverse possession were not erroneous because a witness's affidavit established that, since the early 1900s, the adjoining landowner paid taxes on the land, har-

vested timber, maintained boundary lines, leased the land, and restricted access to the land; no one ever claimed ownership of the property or objected to any of the acts or dominion of the adjoining landowner until a property owner filed his quiet title complaint. *Dye v. Anderson Tully Co.*, 2011 Ark. App. 503, — S.W.3d — (2011).

18-11-103. Payment of taxes on wild and unimproved land — Presumption of color of title.**CASE NOTES****Possession.**

Trial court's conclusions that an adjoining landowner claimed land as its own and that it was the owner of the land by adverse possession were not erroneous because a witness's affidavit established that, since the early 1900s, the adjoining landowner paid taxes on the land, har-

vested timber, maintained boundary lines, leased the land, and restricted access to the land; no one ever claimed ownership of the property or objected to any of the acts or dominion of the adjoining landowner until a property owner filed his quiet title complaint. *Dye v. Anderson Tully Co.*, 2011 Ark. App. 503, — S.W.3d — (2011).

18-11-106. Adverse possession.**CASE NOTES****ANALYSIS**

Adverse Possession Not Shown.

Adverse Possession Shown.

Statutory Proof Not Applicable.

Adverse Possession Not Shown.

One appellant testified that he owned and paid the taxes on property contiguous to the land in dispute and he was in possession of land lying north of fence through a pond, and further that he cleared and maintained that property, but the evidence supported appellees' position

that the use of the property by appellants and their predecessors was permissive prior to a survey being completed, and until that survey was done, there was little evidence that appellees received notice of an adverse use; the finding that appellants did not establish adverse possession was not clearly erroneous. *Horton v. Taylor*, 2012 Ark. App. 469, — S.W.3d — (2012).

Adverse Possession Shown.

Appellee proved an adverse possession claim as he showed he began exclusively

using a property with hostile intent that was understood by his co-tenants, more than seven years before 1995, and therefore, his claim vested before this section became effective as even though appellee did not live on the property for the entire time since his mother had died, everyone who had lived on the property since that time had done so with appellee's permission, and appellee used the property as his own and threatened his co-tenants. *Sutton v. Gardner*, 2011 Ark. App. 737, — S.W.3d — (2011).

Statutory Proof Not Applicable.

Although appellant argued appellee did not prove an adverse possession claim

under this section, contending that appellee failed to show she paid the taxes on the subject property, a trial court properly found appellee's adverse possession claim vested in 1973, prior to the enactment of the additional statutory requirements in this section, including payment of taxes, and because the additional statutory elements were not applied retroactively, appellee was not subject to the statute's additional requirements. *Smith v. Smith*, 2011 Ark. App. 598, — S.W.3d — (2011).

Cited: *Dohle v. Duffield*, 2012 Ark. App. 217, — S.W.3d — (2012).

CHAPTER 12

CONVEYANCES

SUBCHAPTER 6 — MISCELLANEOUS CONVEYANCES

18-12-601. After-acquired title.

CASE NOTES

ANALYSIS

Mineral Rights.

Oil, Gas, and Mineral Rights.

Mineral Rights.

This section did not convey plaintiffs the mineral rights they alleged they obtained from defendant two in 2003, which had been conveyed to defendant two by defendant one in 1997, when the rights were conveyed to defendant one in 2004 as the deeds had been reformed deeds and related back to their original execution, and there was no mineral title to pass under this section. *Mauldin v. Snowden*, 2011 Ark. App. 630, — S.W.3d — (2011).

Oil, Gas, and Mineral Rights.

Ruling in favor of a corporation that the decedent's wife did not hold title to the land or mineral rights at issue was proper because she possessed only a dower interest at the time of the 1986 deed and the after-acquired title doctrine barred her from asserting a claim to the property under subsection (a) of this section. At most, she had only a dower interest in the oil, gas, and mineral rights reserved by her husband in the 1986 deed and even if the deed had specifically limited her conveyance to her actual interest at the time, that interest was inchoate when the deed was executed. *Evans v. SEECO, Inc.*, 2011 Ark. App. 739 (2011).

CHAPTER 15

EMINENT DOMAIN

SUBCHAPTER 2 — COUNTIES AND MUNICIPAL CORPORATIONS GENERALLY

18-15-201. Power to condemn for parks, boulevards, and public buildings — Improvement districts.

CASE NOTES

Appeal.

In an eminent domain case in which an order of immediate possession was granted, because the issue of just compensation remained to be determined, the order granting immediate possession was

not a final, appealable order. The construction of a bicycle trail would not render it impossible to restore his property to its previous condition. *Thomas v. City of Fayetteville*, 2012 Ark. 120 (2012).

SUBCHAPTER 3 — MUNICIPAL CORPORATIONS GENERALLY

18-15-303. Municipal corporations — Power to condemn — Proceedings — Controversy.

CASE NOTES

Appeal.

In an eminent domain case in which an order of immediate possession was granted, because the issue of just compensation remained to be determined, the order granting immediate possession was

not a final, appealable order. The construction of a bicycle trail would not render it impossible to restore his property to its previous condition. *Thomas v. City of Fayetteville*, 2012 Ark. 120 (2012).

SUBCHAPTER 6 — MUNICIPAL CORPORATIONS — WATER AND WATER-GENERATED ELECTRIC COMPANIES

18-15-605. Damages — Deposits.

CASE NOTES

Attorney's Fees.

Trial court erred in awarding attorney's fees to a lessee in an airport eminent domain proceeding brought under §. 14-362-120 because subsection (b) of this sec-

tion applied only to municipal corporations and other corporations that supplied water to cities, towns, or rural areas. *Delta Reg'l Airport Auth. v. Gunn*, 2011 Ark. App. 701, — S.W.3d — (2011).

SUBTITLE 3. PERSONAL PROPERTY**CHAPTER 28****UNCLAIMED PROPERTY****SUBCHAPTER 2 — UNCLAIMED PROPERTY ACT****18-28-213. Deposit of funds.**

A.C.R.C. Notes. Acts 2012, No. 213, § 10, provided: “FUND TRANSFER. On the effective date of this Act and notwithstanding the provisions of A.C.A. § 18-28-213 (c)(2) regarding the transfer of funds from the Unclaimed Property Proceeds Trust Fund to the general revenues of the state, the Auditor of State shall transfer on his books and those of the State Treasurer and the Chief Fiscal Officer of the State, the sum of one million dollars (\$1,000,000) from the Unclaimed Property Proceeds Trust Fund to the State Central Services Fund as a direct revenue for the Auditor of State to be used exclusively for grants to implement a statewide Enhanced 9-1-1 System.”

Acts 2012, Nos. 271 and 287, § 8, provided: “FUND TRANSFER. Immediately upon the effective date of this Act, and notwithstanding the provisions of A.C.A. 18-28-213 (c)(2) regarding the transfer of funds from the Unclaimed Property Proceeds Trust Fund to the general revenues of the state, the Auditor of State shall transfer on his or her books and those of

the State Treasurer and the Chief Fiscal Officer of State the sum of one million five hundred thousand dollars (\$1,500,000) from the Unclaimed Property Proceeds Trust Fund to the Mid-South Community College Fund to be expensed from the Arkansas Delta Training and Education Consortium, the Arkansas Delta Training and Education Consortium Partners, and the University Center Partners appropriations.”

Acts 2012, Nos. 271 and 287, § 9, provided: “FUND TRANSFER. Immediately upon the effective date of this Act, and notwithstanding the provisions of A.C.A. 18-28-213 (c)(2) regarding the transfer of funds from the Unclaimed Property Proceeds Trust Fund to the general revenues of the state, the Auditor of State shall transfer on his or her books and those of the State Treasurer and the Chief Fiscal Officer of State the sum of one million dollars (\$1,000,000) from the Unclaimed Property Proceeds Trust Fund to the Higher Education Grants Fund Account to provide additional funding for scholarships.”

SUBTITLE 4. MORTGAGES AND LIENS**CHAPTER 40****MORTGAGES****18-40-102. Lien attaches when recorded.****CASE NOTES****Mistake in Record.**

Under this section, a creditor bank's recorded mortgage did not put a bona fide purchaser on constructive notice because it was not possible to tell exactly what

land was being described, thus, Chapter 12 debtors in possession could avoid the lien under 11 U.S.C.S. § 544(a)(3). *Caine v. First State Bank* (In re Caine), 462 B.R. 688 (Bankr. W.D. Ark. 2011).

CHAPTER 44

MECHANICS' AND MATERIALMEN'S LIENS

SUBCHAPTER 1 — GENERAL PROVISIONS

18-44-110. Preference over prior liens — Exception.

CASE NOTES

Commencement of Improvement.

Trial court erred in finding that construction on a project did not commence until after the filing of the lender's mortgage by considering the parties' intent; under subdivision (a)(2) of this section, the trial court should have considered

whether there was a visible manifestation of activity on the property that would show that construction had begun or would soon begin. *May Constr. Co. v. Town Creek Constr. & Dev., LLC*, 2011 Ark. 281, — S.W.3d — (2011).

18-44-115. Notice to owner by contractor.

CASE NOTES

Strict Compliance.

Lien notice did not comply with this section, because strict compliance with the notice requirements of this section was required, and the description of work done simply tracked the language of subdivision (e)(2)(C)(i), and in no way actually described the labor and materials

provided by the claimant; the claimant merely stated that the lien notice was being provided in connection with sums owed and unpaid for labor and materials provided in connection with the properties. *Ground Zero Constr., Inc. v. Creek*, 2012 Ark. 243, — S.W.3d — (2012).

18-44-123. Parties to suits.

CASE NOTES

Contractors.

United States' motion to dismiss plaintiffs' claims for breach of contract and enforcement of its materialman's lien was granted in part because it had not waived its sovereign immunity, and thus, it had to be dismissed with prejudice from the action. However, dismissing the United States from the lawsuit did not necessarily result in a dismissal of plaintiff's lien

claims, as plaintiff was not required to make the United States, the owner and lessor of the subject property, a party to its lawsuit in order to perfect its lien interest and recover against defendant lessees' leasehold estate under this section. *Dennis Allen Constr. Co. v. Sec'y of Army Corps of Eng'rs*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 107966 (W.D. Ark. Aug. 2, 2012).

CHAPTER 47

FEDERAL LIENS

SUBCHAPTER 2 — UNIFORM FEDERAL LIEN REGISTRATION ACT

18-47-202. Place of filing.

CASE NOTES

Bankruptcy.

Bankruptcy court denied Chapter 13 debtors' objection to a secured claim the Internal Revenue Service ("IRS") filed against their bankruptcy estate that was based on the debtors' argument that the IRS did not have a secured claim against personal property they owned because it filed a lien under 26 U.S.C.S. § 6323 in Mississippi County, Arkansas, and the debtors had moved the property to Cleburne County, Arkansas. Section

6323(f)(2)(B) eliminated the need for the IRS to file tax liens in every location to which a taxpayer might move by creating a fiction and deeming the property situated at the location where the property was located when the lien was filed, and the IRS complied with subdivision (c)(4) of this section when it filed its lien in Mississippi County because the male debtor lived in Mississippi County at the time the lien was filed. In re Chitmon, 475 B.R. 689 (Bankr. E.D. Ark. 2012).

CHAPTER 48

MISCELLANEOUS LIENS ON PERSONAL PROPERTY

SUBCHAPTER.

8. — PRINCIPAL BROKER REAL ESTATE LIEN ACT.

SUBCHAPTER 8 — PRINCIPAL BROKER REAL ESTATE LIEN ACT

SECTION.

18-48-805. Notice of claim of lien against proceeds.

18-48-805. Notice of claim of lien against proceeds.

(a) A notice of claim of lien against proceeds shall state:

(1) The name, address, and telephone number of the principal broker;

(2) The date of the representation agreement;

(3) The name of the owner of the commercial real estate;

(4) The legal description of the commercial real estate as described in the representation agreement;

(5) The amount of the claimed lien expressed as either a specified sum, a percentage of the sales price, or a formula;

(6) The real estate license number of the principal broker;

(7) That the lien claimant has read the notice of claim of lien, knows its contents, and believes:

(A) The statements contained in the notice of claim of lien to be true and correct; and

(B) That the claim is made pursuant to a valid representation agreement and is not frivolous; and

(8) That the information contained in the notice of claim of lien is true and accurate to the knowledge of the signatory.

(b) The notice of claim of lien against proceeds shall be notarized.

(c) A copy of the representation agreement shall be attached to the notice of claim of lien against proceeds.

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Publisher's Notes. This section is being set out to reflect a correction in the 2011 supplement.

Amendments. The 2011 amendment substituted "principal broker" for "licensee" in (a)(1) and (6).

CHAPTER 50

STATUTORY FORECLOSURES

SECTION.

18-50-107. Manner of sale.

18-50-102. Parties authorized to foreclose mortgage or deed of trust.

CASE NOTES

ANALYSIS

In General.
Mortgagees.

In General.

Arkansas Statutory Foreclosure Act in subdivision (a)(2) of this section provides that a bank may be authorized to do business in Arkansas either by state or federal law; the Wingo Act, § 4-27-1501 et seq., specifies that a foreign corporation may obtain authority to transact business in Arkansas by obtaining a certificate from the Arkansas Secretary of State; and the Arkansas banking statutes provide that in some instances an out-of-state bank must obtain a certificate from the Arkansas Bank Commissioner. JPMorgan Chase Bank, N.A. v. Johnson, 470 B.R. 829 (Bankr. E.D. Ark. 2012).

Mortgagees.

Section 18-50-117 required nonresident mortgagee to be authorized to do business in Arkansas, and noncompliance was not cured by an attorney-in-fact under this section, not superseded by Ark. Code Ann. § 4-27-101 et seq., and not preempted by 12 U.S.C.S. § 24 and 371 of the National Banking Act. Attorney's fees were awarded under § 16-22-308. In re Johnson, 460 B.R. 234 (Bankr. E.D. Ark. 2011).

National banking association was authorized to avail itself of the Arkansas Statutory Foreclosure Act even though it was not registered with the Arkansas Secretary of State where it was chartered by the Office of the Comptroller of the Currency, and as such, it was authorized to do business within the state by virtue of § 18-50-117. JPMorgan Chase Bank, N.A. v. Johnson, 470 B.R. 829 (Bankr. E.D. Ark. 2012).

18-50-107. Manner of sale.

(a) The sale shall be held on the date and at the time and place designated in the notice of default and intention to sell, except that the sale shall:

(1) Be held between 9:00 A.M. and 4:00 P.M.;

(2) Be held either at the premises of the trust property or at the front door of the county courthouse of the county in which the trust property is situated; and

(3) Not be held on a Saturday, Sunday, or a legal holiday.

(b)(1)(A) Any person, including the mortgagee and the beneficiary, may bid at the sale.

(B) The trustee may bid for the beneficiary but not for himself or herself.

(2) The mortgagee or trustee shall engage a third party that is licensed to sell real estate under the Real Estate License Law, § 17-42-101 et seq., and licensed to act as an auctioneer under the Auctioneer's Licensing Act, § 17-17-101 et seq., to conduct the sale and act at the sale as the auctioneer.

(3) No bid shall be accepted that is less than two-thirds ($\frac{2}{3}$) of the entire indebtedness due at the date of sale.

(c)(1) The person conducting the sale may postpone the sale from time to time.

(2)(A) In every such case, notice of postponement shall be given by:

(i) Public proclamation thereof by that person; or

(ii) Written notice of postponement posted at the time and place last appointed for the sale.

(B)(i) No other notice of the postponement need be given unless the sale is postponed for longer than thirty (30) days beyond the date designated in the notice.

(ii) In that event, notice thereof shall be given pursuant to § 18-50-104.

(d) The sale is concluded when the highest bid is accepted by the person conducting the sale.

(e)(1) Unless otherwise agreed to by the trustee or mortgagee, the purchaser shall pay at the time of sale the price bid.

(2) Interest shall accrue on any unpaid balance of the price bid at the rate specified in the note secured by the mortgage or deed of trust.

(3) Within ten (10) days after the sale, the mortgagee or trustee shall execute and deliver the trustee's deed or mortgagee's deed to the purchaser.

(4) The mortgagee or beneficiary shall receive a credit on its bid for:

(A) The amount representing the unpaid principal owed;

(B) Accrued interest as of the date of the sale;

(C) Advances for the payment of taxes, insurance, and maintenance of the trust property; and

(D) Costs of the sale, including reasonable trustee's and attorney's fees.

(f)(1) The purchaser at the sale shall be entitled to immediate possession of the property.

(2)(A) Possession may be obtained by filing a complaint in the circuit court of the county in which the property is situated and attaching a copy of the recorded trustee's or mortgagee's deed, whereupon the purchaser shall be entitled to an ex parte writ of assistance.

(B) Alternatively, the purchaser may bring an action for forcible entry and detainer under § 18-60-301 et seq.

(C) In either event, the provisions of § 18-50-116(d) shall apply.

History. Acts 1987, No. 53, § 7; 1999, No. 983, §§ 6, 7; 2011, No. 885, § 4; 2011, No. 901, § 3.

Publisher's Notes. This section is being set out to reflect a correction to the 2011 amendment note by No. 901.

Amendments. The 2011 amendment by No. 885 inserted present (d) and redesignated the remaining subsections accordingly; and substituted "is situated" for "lies" in present (f)(2)(A).

The 2011 amendment by No. 901 inserted "that is licensed to sell real estate under the Real Estate License Law, § 17-42-101 et seq., and licensed to act as an auctioneer under the Auctioneer's Licensing Act, § 17-17-101 et seq." in (b)(2); inserted present (d) and redesignated the remaining subsections accordingly; and substituted "is situated" for "lies" in present (f)(2)(A).

18-50-117. Foreign corporations and other entities.

CASE NOTES

Mortgagees.

This section required nonresident mortgagee to be authorized to do business in Arkansas, and noncompliance was not cured by an attorney-in-fact under § 18-50-102, not superseded by § 4-27-101 et seq., and not preempted by 12 U.S.C.S. § 24 and 371 of the National Banking Act. Attorney's fees were awarded under § 16-22-308. In re Johnson, 460 B.R. 234 (Bankr. E.D. Ark. 2011).

National banking association was authorized to avail itself of the Arkansas Statutory Foreclosure Act even though it was not registered with the Arkansas Secretary of State where it was chartered by the Office of the Comptroller of the Currency, and as such, it was authorized to do business within the state by virtue of this section. JPMorgan Chase Bank, N.A. v. Johnson, 470 B.R. 829 (Bankr. E.D. Ark. 2012).

SUBTITLE 5. CIVIL ACTIONS

CHAPTER 60

MISCELLANEOUS PROCEEDINGS RELATING TO PROPERTY

SUBCHAPTER 2 — EJECTMENT AND TRESPASS

18-60-201. Right of action generally.

CASE NOTES

Title to Support Ejectment.

Trial court did not err in dismissing appellants' ejectment claim under this section because the claim could not stand

in conjunction with the trial court's determination that appellees had a valid quiet title. Davis v. Gillam, 2011 Ark. App. 744 (2011).

SUBCHAPTER 5 — QUIETING TITLE GENERALLY**18-60-503. Publication of notice — Cancellation of liens.****CASE NOTES****Compliance.**

Although appellants claimed the notice requirement with this section was not complied with, and the circuit court did not have jurisdiction to enter a judgment

in appellees' quiet title action, the notice requirements were satisfied because appellants were the record owners of the land and were a party to the action. *Davis v. Gillam*, 2011 Ark. App. 744 (2011).

CHAPTER 61**STATUTES OF LIMITATIONS****18-61-101. Actions to recover land, tenements, or hereditaments.****CASE NOTES****Counterclaim.**

Appellee's counterclaim for quiet title was not barred by § 16-56-126(a)(1) as a prior court did not treat appellee's affirmative defense of adverse possession as a counterclaim under subsection (a) of this section, and the nonsuit of the prior action

did not affect the statute of limitations, which had not begun to run on the quiet title claim as appellee was still in possession of the property. *Sutton v. Gardner*, 2011 Ark. App. 737, — S.W.3d — (2011).

Cited: *Dohle v. Duffield*, 2012 Ark. App. 217, — S.W.3d — (2012).

TITLE 19**PUBLIC FINANCE****CHAPTER.**

5. REVENUE STABILIZATION LAW.
6. REVENUE CLASSIFICATION LAW.

CHAPTER 4**STATE ACCOUNTING AND BUDGETARY PROCEDURES****SUBCHAPTER 5 — FINANCIAL MANAGEMENT SYSTEM****19-4-522. Maintenance and general operation.**

A.C.R.C. Notes. Acts 2012, No. 52, § 9, provided: "TRANSFER RESTRICTIONS. The appropriations provided in this act shall not be transferred under the provisions of Arkansas Code 19-4-522, but only as provided by this act."

Acts 2012, No. 52, § 10, provided:

"TRANSFERS OF APPROPRIATIONS. In the event the amount of any of the budget classifications of maintenance and general operation in this act are found by the administrative head of the agency to be inadequate, then the agency head may request, upon forms provided for such

purpose by the Chief Fiscal Officer of the State, a modification of the amounts of the budget classification. In that event, he shall set out on the forms the particular classifications for which he is requesting an increase or decrease, the amounts thereof, and his reasons therefor. In no event shall the total amount of the budget exceed either the amount of the appropriation or the amount of the funds available, nor shall any transfer be made from the capital outlay or data processing sub-classifications unless specific authority for such transfers is provided by law, except for transfers from capital outlay to data processing when determined by the Department of Information Systems that data processing services for a state agency can be performed on a more cost-efficient basis by the Department of Information Systems than through the purchase of data processing equipment by that state agency. In considering the proposed modification as prepared and submitted by each state agency, the Chief Fiscal Officer of the State shall make such studies as he deems necessary. The Chief Fiscal Officer of the State shall, after obtaining the approval of the Legislative Council, approve the requested transfer if in his opinion it is in the best interest of the state.

"Upon determination by the Director of the Department of Human Services that a Reallocation of Resources is necessary for the effective operation of the Medicaid Expansion Program Grants, the director, with the approval of the Governor, shall have the authority to request from the Chief Fiscal Officer of the State a transfer of Appropriation. This transfer authority applies only to Section 5 Medicaid Expansion Program Grants of this Act between Hospital and Medical Services Item (01) and Prescription Drugs Item (02). The limitation restrictions applicable to the Department Reallocation of Resources authority applies to this section.

"The General Assembly has determined that the agency in this act could be operated more efficiently if some flexibility is given to that agency and that flexibility is being accomplished by providing authority to transfer between certain items of appropriation made by this act. Since the General Assembly has granted the agency broad powers under the transfer of appropriations, it is both necessary and appropriate that the General Assembly main-

tain oversight of the utilization of the transfers by requiring prior approval of the Legislative Council in the utilization of the transfer authority. Therefore, the requirement of approval by the Legislative Council is not a severable part of this section. If the requirement of approval by the Legislative Council is ruled unconstitutional by a court jurisdiction, this entire section is void."

Acts 2012, No. 87, § 4, provided: "TRANSFER RESTRICTIONS. The appropriations provided in this act shall not be transferred under the provisions of Arkansas Code 19-4-522, but only as provided by this act.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 87, § 5, provided: "TRANSFERS OF APPROPRIATIONS. In the event the amount of any of the budget classifications of maintenance and general operation in this act are found by the administrative head of the agency to be inadequate, then the agency head may request, upon forms provided for such purpose by the Chief Fiscal Officer of the State, a modification of the amounts of the budget classification. In that event, he shall set out on the forms the particular classifications for which he is requesting an increase or decrease, the amounts thereof, and his reasons therefor. In no event shall the total amount of the budget exceed either the amount of the appropriation or the amount of the funds available, nor shall any transfer be made from the capital outlay or data processing sub-classifications unless specific authority for such transfers is provided by law, except for transfers from capital outlay to data processing when determined by the Department of Information Systems that data processing services for a state agency can be performed on a more cost-efficient basis by the Department of Information Systems than through the purchase of data processing equipment by that state agency. In considering the proposed modification as prepared and submitted by each state agency, the Chief Fiscal Officer of the State shall make such studies as he deems necessary. The Chief Fiscal Officer of the State shall, after obtaining the approval of the Legislative Council, approve the requested transfer if in his opinion it is in the best interest of the state.

"The General Assembly has determined that the agency in this act could be operated more efficiently if some flexibility is given to that agency and that flexibility is being accomplished by providing authority to transfer between certain items of appropriation made by this act. Since the General Assembly has granted the agency broad powers under the transfer of appropriations, it is both necessary and appropriate that the General Assembly maintain oversight of the utilization of the transfers by requiring prior approval of the Legislative Council in the utilization of the transfer authority. Therefore, the requirement of approval by the Legislative Council is not a severable part of this section. If the requirement of approval by the Legislative Council is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 217, § 5, provided: "TRANSFERS OF APPROPRIATIONS. In the event the amount of any of the budget classifications of maintenance and general operation in this act are found by the administrative head of the agency to be inadequate, then the agency head may request, upon forms provided for such purpose by the Chief Fiscal Officer of the State, a modification of the amounts of the budget classification. In that event, he shall set out on the forms the particular classifications for which he is requesting an increase or decrease, the amounts thereof, and his reasons therefor. In no event shall the total amount of the budget exceed either the amount of the appropriation or the amount of the funds available, nor shall any transfer be made from the capital outlay or data processing sub-classifications unless specific authority for such transfers is provided by law, except for transfers from capital outlay to data processing when determined by the Department of Information Systems that data processing services for a state agency can be performed on a more cost-efficient basis by the Department of Information Systems than through the purchase of data processing equipment by that state agency. In considering the proposed modification as prepared and submitted by each state agency, the Chief Fiscal Officer of the State shall make such studies as he

deems necessary. The Chief Fiscal Officer of the State shall, after obtaining the approval of the Legislative Council, approve the requested transfer if in his opinion it is in the best interest of the state.

"The General Assembly has determined that the agency in this act could be operated more efficiently if some flexibility is given to that agency and that flexibility is being accomplished by providing authority to transfer between certain items of appropriation made by this act. Since the General Assembly has granted the agency broad powers under the transfer of appropriations, it is both necessary and appropriate that the General Assembly maintain oversight of the utilization of the transfers by requiring prior approval of the Legislative Council in the utilization of the transfer authority. Therefore, the requirement of approval by the Legislative Council is not a severable part of this section. If the requirement of approval by the Legislative Council is ruled unconstitutional by a court jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 264, § 5, provided: "TRANSFERS OF APPROPRIATIONS. In the event the amount of any of the budget classifications of maintenance and general operation in this act are found by the administrative head of the agency to be inadequate, then the agency head may request, upon forms provided for such purpose by the Chief Fiscal Officer of the State, a modification of the amounts of the budget classification. In that event, he shall set out on the forms the particular classifications for which he is requesting an increase or decrease, the amounts thereof, and his reasons therefor. In no event shall the total amount of the budget exceed either the amount of the appropriation or the amount of the funds available, nor shall any transfer be made from the capital outlay or data processing sub-classifications unless specific authority for such transfers is provided by law, except for transfers from capital outlay to data processing when determined by the Department of Information Systems that data processing services for a state agency can be performed on a more cost-efficient basis by the Department of Information Systems than through the purchase of

data processing equipment by that state agency. In considering the proposed modification as prepared and submitted by each state agency, the Chief Fiscal Officer of the State shall make such studies as he deems necessary. The Chief Fiscal Officer of the State shall, after obtaining the approval of the Legislative Council, approve the requested transfer if in his opinion it is in the best interest of the state.

"The General Assembly has determined that the agency in this act could be operated more efficiently if some flexibility is given to that agency and that flexibility is being accomplished by providing authority to transfer between certain items of appropriation made by this act. Since the

General Assembly has granted the agency broad powers under the transfer of appropriations, it is both necessary and appropriate that the General Assembly maintain oversight of the utilization of the transfers by requiring prior approval of the Legislative Council in the utilization of the transfer authority. Therefore, the requirement of approval by the Legislative Council is not a severable part of this section. If the requirement of approval by the Legislative Council is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 16 — SALARIES AND PAYROLL DISBURSEMENT

A.C.R.C. Notes. Acts 2012, No. 281, § 74, provided: "POSITION ESTABLISHMENT. The Chief Fiscal Officer of the State shall have the authority to establish such positions as necessary for State agencies to process payroll through the Arkansas Administrative Statewide Information System for federal and state tax reporting purposes as necessary to comply with the United States Internal Revenue Code (IRC), 2001-Code-Vol, Sec 3401 and Treasury Regulations §31.3401(c)-1(a) and §1.1402(c)-2(b), and others which govern the reporting of income and payment of withholding and matching taxes for

personal services. The positions established shall not be considered as part of the total number of authorized positions for an agency and shall only be considered as placeholders for payments to individuals who are board or commission members or elected officials of the State that do not otherwise receive salaries or wages as defined in §19-4-521 for their personal services. Further, none of the positions established under this section shall imply eligibility for state retirement or state health insurance benefits. The establishment of such positions shall not exceed 250 positions in any fiscal year."

CHAPTER 5

REVENUE STABILIZATION LAW

SUBCHAPTER.

3. GENERAL REVENUE OPERATING FUNDS AND FUND ACCOUNTS.
4. DISTRIBUTION OF GENERAL REVENUES.
10. MISCELLANEOUS FUNDS.
11. TRUST FUNDS CONTINUED.
12. MISCELLANEOUS FUNDS CONTINUED.

SUBCHAPTER 3 — GENERAL REVENUE OPERATING FUNDS AND FUND ACCOUNTS

SECTION.

19-5-303. Institutions of higher education funds.

SECTION.

19-5-311. Technical college funds created.

Effective Dates. Identical Acts 2012,
Nos. 271 and 287, § 10: July 1, 2012.

19-5-303. Institutions of higher education funds.

(a)(1) **UNIVERSITY OF ARKANSAS FUND.** There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Fund".

(2) The University of Arkansas Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas, including the Fayetteville campus, the Cooperative Extension Service, the University of Arkansas agricultural experiment stations, the Graduate Institute of Technology, the Arkansas Archeological Survey, and for such other related and miscellaneous programs as may be provided by law.

(3) The University of Arkansas Fund shall consist of:

(A) Those general revenues that may be provided by law;

(B) Those special revenues as set out in §§ 19-6-301(45), 19-6-301(229), and 19-6-301(232); and

(C) Funds received from the Budget Stabilization Trust Fund as authorized by § 19-5-501.

(b)(1) **UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND.** There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Medical Center Fund".

(2) The University of Arkansas Medical Center Fund is to be used for the maintenance, operation, and improvement of the University of Arkansas for Medical Sciences and its various divisions and programs, including the area health education centers and physician extender programs.

(3) The University of Arkansas Medical Center Fund shall consist of:

(A) Those general revenues as may be provided by law;

(B) Those special revenues as set out in § 19-6-301(224); and

(C) Any other funds made available for the support of the University of Arkansas for Medical Sciences which are required to be deposited into the State Treasury.

(c)(1) **UNIVERSITY OF ARKANSAS AT LITTLE ROCK FUND.** There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas at Little Rock Fund".

(2) The University of Arkansas at Little Rock Fund shall be used for the maintenance, operation, and improvement of the Little Rock campus of the University of Arkansas and its various divisions and programs, including the Industrial Research and Extension Center.

(3) The University of Arkansas at Little Rock Fund shall consist of:

(A) Those general revenues as may be provided by law;

(B) Those special revenues as set out in § 19-6-301(229); and

(C) Any other funds made available for the support of the University of Arkansas at Little Rock which are required to be deposited into the State Treasury by law.

(d)(1) UNIVERSITY OF ARKANSAS AT MONTICELLO FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas at Monticello Fund".

(2) The University of Arkansas at Monticello Fund shall be used for the maintenance, operation, and improvement of the Monticello campus of the University of Arkansas and its various divisions, the University of Arkansas at Monticello College of Technology-Crossett, and the University of Arkansas at Monticello College of Technology-McGehee.

(3) The University of Arkansas at Monticello Fund shall consist of:

(A) Those general revenues as may be provided by law;

(B) The June 30, 2003, balances in the Forest Echoes Technical Institute Fund Account and the Great Rivers Comprehensive Lifelong Learning Center Fund Account; and

(C) Any other funds made available for the support of the University of Arkansas at Monticello which are required to be deposited into the State Treasury by law.

(e)(1) UNIVERSITY OF ARKANSAS AT PINE BLUFF FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas at Pine Bluff Fund".

(2) The University of Arkansas at Pine Bluff Fund shall be used for the maintenance, operation, and improvement of the Pine Bluff campus of the University of Arkansas.

(3) The University of Arkansas at Pine Bluff Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas at Pine Bluff and its various divisions, including the special teacher training program, which are required to be deposited into the State Treasury by law.

(f)(1) ARKANSAS STATE UNIVERSITY FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University Fund".

(2) The Arkansas State University Fund shall be used for the maintenance, operation, and improvement of Arkansas State University.

(3) The Arkansas State University Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas State University which are required to be deposited into the State Treasury by law.

(g)(1) ARKANSAS STATE UNIVERSITY — BEEBE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the

Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University — Beebe Fund".

(2) The Arkansas State University — Beebe Fund shall be used for the maintenance, operation, and improvement of Arkansas State University-Beebe, including Arkansas State Technical Institute, Arkansas State University-Searcy, and Arkansas State University-Heber Springs.

(3) The Arkansas State University — Beebe Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas State University-Beebe which are required to be deposited into the State Treasury by law.

(h)(1) ARKANSAS TECH UNIVERSITY FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas Tech University Fund".

(2) The Arkansas Tech University Fund shall be used for the maintenance, operation, and improvement of Arkansas Tech University.

(3) The Arkansas Tech University Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas Tech University which are required to be deposited into the State Treasury by law.

(i)(1) HENDERSON STATE UNIVERSITY FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Henderson State University Fund".

(2) The Henderson State University Fund shall be used for the maintenance, operation, and improvement of Henderson State University, including the nursing program.

(3) The Henderson State University Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Henderson State University which are required to be deposited into the State Treasury by law.

(j)(1) SOUTHERN ARKANSAS UNIVERSITY FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Southern Arkansas University Fund".

(2) The Southern Arkansas University Fund shall be used for the maintenance, operation, and improvement of Southern Arkansas University.

(3) The Southern Arkansas University Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Southern Arkansas University and its programs which are required to be deposited into the State Treasury by law.

(k)(1) UNIVERSITY OF CENTRAL ARKANSAS FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief

Fiscal Officer of the State a fund to be known as the "University of Central Arkansas Fund".

(2) The University of Central Arkansas Fund shall be used for the maintenance, operation, and improvement of the University of Central Arkansas.

(3) The University of Central Arkansas Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Central Arkansas which are required to be deposited into the State Treasury by law.

(l)(1) UNIVERSITY OF ARKANSAS AT FORT SMITH FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas at Fort Smith Fund".

(2) The University of Arkansas at Fort Smith Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas at Fort Smith.

(3) The University of Arkansas at Fort Smith Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas at Fort Smith which are required to be deposited into the State Treasury by law.

(m)(1) NORTH ARKANSAS COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "North Arkansas College Fund".

(2) The North Arkansas College Fund shall be used for the maintenance, operation, and improvement of North Arkansas College.

(3) The North Arkansas College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of North Arkansas College which are required to be deposited into the State Treasury by law.

(n)(1) EAST ARKANSAS COMMUNITY COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "East Arkansas Community College Fund".

(2) The East Arkansas Community College Fund shall be used for the maintenance, operation, and improvement of East Arkansas Community College.

(3) The East Arkansas Community College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of East Arkansas Community College which are required to be deposited into the State Treasury by law.

(o)(1) GARLAND COUNTY COMMUNITY COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Garland County Community College Fund".

(2) The Garland County Community College Fund shall be used for the maintenance, operation, and improvement of Garland County Community College.

(3) The Garland County Community College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Garland County Community College which are required to be deposited into the State Treasury by law.

(p)(1) ARKANSAS NORTHEASTERN COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas Northeastern College Fund".

(2) The Arkansas Northeastern College Fund shall be used for the maintenance, operation, and improvement of Arkansas Northeastern College.

(3) The Arkansas Northeastern College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas Northeastern College which are required to be deposited into the State Treasury by law.

(q)(1) PHILLIPS COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Phillips Community College of the University of Arkansas Fund".

(2) The Phillips Community College of the University of Arkansas Fund shall be used for the maintenance, operation, and improvement of Phillips Community College of the University of Arkansas, including the Stuttgart and DeWitt campuses.

(3) The Phillips Community College of the University of Arkansas Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Phillips Community College of the University of Arkansas which are required to be deposited into the State Treasury by law.

(r)(1) RICH MOUNTAIN COMMUNITY COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Rich Mountain Community College Fund".

(2) The Rich Mountain Community College Fund shall be used for the maintenance, operation, and improvement of Rich Mountain Community College.

(3) The Rich Mountain Community College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Rich Mountain Community College which are required to be deposited into the State Treasury by law.

(s)(1) NORTHWEST ARKANSAS COMMUNITY COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and

the Chief Fiscal Officer of the State a fund to be known as the "Northwest Arkansas Community College Fund".

(2) The Northwest Arkansas Community College Fund shall be used for the maintenance, operation, and improvement of Northwest Arkansas Community College.

(3) The Northwest Arkansas Community College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Northwest Arkansas Community College which are required to be deposited into the State Treasury by law.

(t)(1) SOUTH ARKANSAS COMMUNITY COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "South Arkansas Community College Fund".

(2) The South Arkansas Community College Fund shall be used for the maintenance, operation, and improvement of South Arkansas Community College.

(3) The South Arkansas Community College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of South Arkansas Community College which are required to be deposited into the State Treasury by law.

(u)(1) SAU-TECH FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "SAU-Tech Fund".

(2) The SAU-Tech Fund shall be used for the maintenance, operation, and improvement of SAU-Tech, the Arkansas Fire Training Academy, and the Arkansas Environmental Training Academy.

(3) The SAU-Tech Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of SAU-Tech and its programs which are required to be deposited into the State Treasury by law.

(v)(1) MID-SOUTH COMMUNITY COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Mid-South Community College Fund".

(2) The Mid-South Community College Fund shall be used for the maintenance, operation, and improvement of Mid-South Community College.

(3) The Mid-South Community College Fund shall consist of:

(A) Those general revenues as may be provided by law;

(B) Those special revenues as set out in § 19-6-301(183); and

(C) Any other funds made available for the support of Mid-South Community College which are required to be deposited into the State Treasury by law.

(w)(1) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT HOPE FUND. There is established on the books of the Treasurer of State, the Auditor of

State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Community College at Hope Fund".

(2) The University of Arkansas Community College at Hope Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas Community College at Hope.

(3) The University of Arkansas Community College at Hope Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas Community College at Hope which are required to be deposited into the State Treasury by law.

(x)(1) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT BATESVILLE FUND.

There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Community College at Batesville Fund".

(2) The University of Arkansas Community College at Batesville Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas Community College at Batesville.

(3) The University of Arkansas Community College at Batesville Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas Community College at Batesville which are required to be deposited into the State Treasury by law.

(y)(1) HIGHER EDUCATION INSTITUTIONS PERFORMANCE FUND. The Higher Education Institutions Performance Fund shall be used to provide additional support for institutions of higher education on the basis of institutional performance as determined by the Arkansas Higher Education Coordinating Board and reported to the Legislative Council.

(2) The Higher Education Institutions Performance Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds provided by law.

(z)(1) ARKANSAS STATE UNIVERSITY — NEWPORT FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University — Newport Fund".

(2) The Arkansas State University — Newport Fund shall be used for the maintenance, operation, and improvement of Arkansas State University — Newport.

(3) The Arkansas State University — Newport Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas State University — Newport which are required to be deposited into the State Treasury by law.

(aa)(1) TWO-YEAR COLLEGE MODEL FORMULA FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Two-Year College Model Formula Fund".

(2) The Two-Year College Model Formula Fund shall be used for the distribution of funds to the various two-year colleges by the Department of Higher Education as may be authorized by law.

(3) The Two-Year College Model Formula Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available by the General Assembly.

(bb)(1) COSSATOT COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Cossatot Community College of the University of Arkansas Fund".

(2) The Cossatot Community College of the University of Arkansas Fund shall be used for the maintenance, operation, and improvement of Cossatot Community College of the University of Arkansas.

(3) The Cossatot Community College of the University of Arkansas Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Cossatot Community College of the University of Arkansas which are required to be deposited into the State Treasury by law.

(cc)(1) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT MORRILTON FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Community College at Morrilton Fund".

(2) The University of Arkansas Community College at Morrilton Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas Community College at Morrilton.

(3) The University of Arkansas Community College at Morrilton Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas Community College at Morrilton which are required to be deposited into the State Treasury by law.

(dd)(1) ARKANSAS STATE UNIVERSITY-MOUNTAIN HOME FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University-Mountain Home Fund".

(2) The Arkansas State University-Mountain Home Fund shall be used for the maintenance, operation, and improvement of Arkansas State University-Mountain Home.

(3) The Arkansas State University-Mountain Home Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas State University-Mountain Home which are required to be deposited into the State Treasury by law.

(ee)(1) NATIONAL PARK COMMUNITY COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the

Chief Fiscal Officer of the State a fund to be known as the "National Park Community College Fund".

(2) The National Park Community College Fund shall be used for the maintenance, operation, and improvement of National Park Community College.

(3) The National Park Community College Fund shall consist of:

(A) Those general revenues transferred each month from the Garland County Community College Fund;

(B) The June 30, 2003, balances in the Garland County Community College Fund; and

(C) Any other funds made available for the support of National Park Community College which are required to be deposited into the State Treasury by law.

(ff)(1) SCHOOL FOR MATH, SCIENCE, AND ARTS FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "School for Math, Science, and Arts Fund".

(2) The School for Math, Science, and Arts Fund shall be used to provide for the maintenance, operation, and improvement required by the Arkansas School for Mathematics, Sciences, and the Arts in carrying out its powers, functions, and duties as set out by law.

(3) The School for Math, Science, and Arts Fund shall consist of:

(A) Moneys allocated and transferred from the Educational Excellence Trust Fund;

(B) Any general revenues as may be provided by the Revenue Stabilization Law, § 19-5-101 et seq.; and

(C) Any other moneys as may be authorized by law.

(gg)(1) OZARKA COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Ozarka College Fund".

(2) The Ozarka College Fund shall be used for the maintenance, operation, and improvement of Ozarka College.

(3) The Ozarka College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Ozarka College which are required to be deposited into the State Treasury by law.

(hh)(1) SOUTHEAST ARKANSAS COLLEGE FUND. There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Southeast Arkansas College Fund".

(2) The Southeast Arkansas College Fund shall be used for the maintenance, operation, and improvement of Southeast Arkansas College.

(3) The Southeast Arkansas College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Southeast Arkansas College which are required to be deposited into the State Treasury by law.

(ii)(1) **COLLEGE OF THE OUACHITAS FUND.** There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "College of The Ouachitas Fund".

(2) The College of The Ouachitas Fund shall be used for the maintenance, operation, and improvement of College of The Ouachitas.

(3) The College of The Ouachitas Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of College of The Ouachitas which are required to be deposited into the State Treasury by law.

History. Acts 1973, No. 750, § 6; 1975, No. 868, §§ 8, 9; 1977, No. 955, §§ 12, 13; 1979, No. 1013, § 9; 1979, No. 1077, § 3; 1981, No. 938, § 7; 1983, No. 801, §§ 5-7, 10; 1985, No. 888, § 8; A.S.A. 1947, § 13-521; Acts 1989, No. 629, § 4; 1991, No. 335, §§ 1, 2; 1991, No. 1135, § 2; 1993, No. 447, § 8; 1993, No. 1073, §§ 2, 3; 1995, No. 1163, §§ 6-9; 1995, No. 1296, § 70; 1997, No. 1248, §§ 6, 7; 1999, No. 1463, §§ 3-6; 2001, No. 90, § 9; 2001, No.

292, § 12; 2001, No. 297, § 5; 2003, No. 1290, § 4; 2003 (1st Ex. Sess.), No. 55, §§ 2, 3, 27, 29, 31, 34; 2005, No. 2282, § 3; 2005, No. 2316, § 3; 2007, No. 1032, §§ 4-6; 2007, No. 1201, §§ 4-6; 2009, No. 1440, § 1; 2009, No. 1441, § 1; 2011, No. 1095, § 2; 2011, No. 1115, § 2; 2012, No. 271, § 1; 2012, No. 287, § 1.

Amendments. The 2012 amendment by identical acts Nos. 271 and 287 added (gg), (hh), and (ii).

19-5-304. Education Fund.

A.C.R.C. Notes. Acts 2012, No. 178, § 7, provided: "HONORING ARKANSAS' WAR HEROES. The appropriation authorized in this Act for Honoring Arkansas' War Heroes is not intended to be carried forward into the base level for the purposes of budget preparation. Any appropriation request for this purpose shall be considered a new appropriation request, and therefore will be considered a change level budget request.

"Notwithstanding any law pertaining to

the transfer of year-end fund balances or any law to the contrary, any funds provided to the Educational Television Fund Account for the purpose of funding the Honoring Arkansas' War Heroes Appropriation which remain in the Educational Television Fund Account at the end of a fiscal year shall remain in the Educational Television Fund Account and shall continue to be allocated to the Honoring Arkansas' War Heroes Appropriation in the following fiscal year."

19-5-305. Public School Fund.

Acts 2012, No. 246, § 21, provided: **TURNBACK FUNDS.** Any Federal Mineral Leasing Funds, Federal Forest Reserve Funds, Federal Flood Control Funds, or any similar turnback funds in the State Treasury for which the eligible county and/or school district cannot be

identified may be transferred to the Department of Education Public School Fund Account and used for any lawful school purpose.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

19-5-306. Department of Human Services Fund.

A.C.R.C. Notes. Acts 2012, No. 250, § 8, provided: "DEPARTMENT OF HUMAN SERVICES GRANTS FUND AC-

COUNT. The Department of Human Services Grants Fund Account shall be used for the following grant programs to consist

of general revenues and any other nonfederal funds, as may be appropriated by the General Assembly:

- “(i) Children’s Medical Services;
- “(ii) Food Stamp Employment and Training Program;
- “(iii) Aid to the Aged, Blind, and Disabled;
- “(iv) Transitional Employment Assistance Program;
- “(v) Private nursing home care;

- “(vi) Infant Infirmary — nursing home care;
- “(vii) Public Nursing Home Care;
- “(viii) Prescription Drugs;
- “(ix) Hospital and Medical Services;
- “(x) Child and Family Life Institute;
- “(xi) Community Services Block Grant;
- “(xii) ARKIDSFIRST;
- “(xiii) Child Health Management Services; and
- “(xiv) Child Care Grant”

19-5-311. Technical college funds created.

(a)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Black River Technical College Fund”, there to be used for the maintenance, operation, and improvement of Black River Technical College.

(2) The Black River Technical College Fund shall consist of:

- (A) Those general revenues as may be provided by law; and
- (B) Any other funds made available for the support of Black River Technical College which are required to be deposited into the State Treasury by law.

(b)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Pulaski Technical College Fund”, there to be used for the maintenance, operation, and improvement of Pulaski Technical College.

(2) The Pulaski Technical College Fund shall consist of:

- (A) Those general revenues as may be provided by law; and
- (B) Any other funds made available for the support of Pulaski Technical College which are required to be deposited into the State Treasury by law.

History. Acts 1991, No. 930, § 3; 1991, No. 931, § 3; 1991, No. 935, § 3; 1991, No. 936, § 3; 1991, No. 937, § 3; 1991, No. 938, § 3; 1991, No. 939, § 3; 1991, No. 940, § 3; 1991, No. 942, § 3; 1991, No. 944, § 3; 1991, No. 945, § 3; 1991, No. 1195, § 3; 1993, No. 1073, §§ 16, 18; 1995, No. 1163, §§ 12, 13; 1997, No. 1248,

§§ 10, 27; 1999, No. 1463, §§ 9-11; 2003 (1st Ex. Sess.), No. 55, §§ 10-13; 2012, No. 271, § 2; 2012, No. 287, § 2.

Amendments. The 2012 amendment by identical acts Nos. 271 and 287 deleted former (b), (c), and (e), and redesignated the remaining subsection accordingly.

SUBCHAPTER 4 — DISTRIBUTION OF GENERAL REVENUES

SECTION.

19-5-401. Allocations for fiscal year 2012-2013 and thereafter.

19-5-402. Maximum allocations of rev-

enues for fiscal year 2012-2013 and thereafter.

Effective Dates. Identical Acts 2012, Nos. 271 and 287, § 10: July 1, 2012.

19-5-401. Allocations for fiscal year 2012-2013 and thereafter.

Commencing with the fiscal year beginning July 1, 2012, and each fiscal year thereafter, the Treasurer of State shall transfer all remaining general revenues available for distribution on the last day of business in July 2012 and on the last day of business in each calendar month thereafter during the fiscal year to the various funds and fund accounts participating in general revenues in the proportions of the maximum allocation as the individual allocation to the fund or fund account bears to the total of the maximum allocation as provided in § 19-5-402.

History. Acts 1973, No. 750, § 11; 1974 (1st Ex. Sess.), No. 90, § 1; 1975, No. 868, § 15; 1977, No. 955, § 1; 1977 (1st Ex. Sess.), No. 7, § 1; 1979, No. 1115, § 1; 1981, No. 937, § 1; 1983, No. 801, § 12; 1983 (1st Ex. Sess.), No. 119, § 1; 1985, No. 888, § 25; A.S.A. 1947, § 13-515; Acts 1987, No. 928, § 15; 1989, No. 629, § 14; 1991, No. 1135, § 12; 1993, No. 1073, § 30; 1995, No. 1163, § 31; 1997, No. 1248, § 28; 1999, No. 1463, § 30; 2001, No. 1646, § 29; 2003 (1st Ex. Sess.), No. 55, § 39; 2005, No. 2282, § 16; 2005, No.

2316, § 16; 2007, No. 1032, § 34; 2007, No. 1201, § 34; 2009, No. 1440, § 7; 2009, No. 1441, § 7; 2010, No. 262, § 12; 2010, No. 296, § 12; 2011, No. 1095, § 16; 2011, No. 1115, § 16; 2012, No. 271, § 6; 2012, No. 287, § 6.

Amendments. The 2012 amendment by identical acts Nos. 271 and 287 substituted "2012-2013" for "2011-2012" in the section heading; substituted "2012" for "2011" in two places; and substituted "§ 19-5-402(a)" for "§ 19-5-402(a) and (b)."

19-5-402. Maximum allocations of revenues for fiscal year 2012-2013 and thereafter.

The Treasurer of State shall first make monthly allocations in the proportions set out in this section to the funds and fund accounts listed below until there has been transferred a total of four billion seven hundred twenty-seven million five hundred thousand dollars (\$4,727,500,000) or so much thereof as may become available, provided that the Treasurer of State shall make such monthly allocations in accordance with each fund or fund account's proportionate part of the total of all such allocations set forth in this section:

Name of Fund or Fund Account	Maximum Allocation
PUBLIC SCHOOL FUND	
(1) Department of Education Public School Fund Account	\$1,961,576,841
(2) State Library Public School Fund Account	\$ 5,672,143
(3) Department of Career Education Public School Fund Account	\$ 32,284,224

Name of Fund or Fund Account	Maximum Allocation
GENERAL EDUCATION FUND	
(1) Department of Education Fund Account	\$ 15,471,687
(2) Educational Facilities Partnership Fund Account	\$ 34,828,951
(3) Division of Public School Academic Facilities and Transportation Fund Account	\$ 2,492,317
(4) Educational Television Fund Account	\$ 5,075,556
(5) School for the Blind Fund Account	\$ 6,110,288
(6) School for the Deaf Fund Account	\$ 10,457,470
(7) State Library Fund Account	\$ 3,345,374
(8) Department of Career Education Fund Account	\$ 3,341,028
(9) Rehabilitation Services Fund Account	\$ 12,953,772
Technical Institutes:	
(10) Crowley's Ridge Technical Institute Fund Account	\$ 2,498,384
(11) Northwest Technical Institute Fund Account	\$ 2,908,129
(12) Riverside Vocational Technical School Fund Account	\$ 2,226,907
DEPARTMENT OF HUMAN SERVICES FUND	
(1) Department of Human Services Administration Fund Account	\$ 15,637,721
(2) Aging and Adult Services Fund Account	\$ 17,391,126
(3) Children and Family Services Fund Account	\$ 49,511,800
(4) Child Care and Early Childhood Education Fund Account	\$ 563,454
(5) Youth Services Fund Account	\$ 48,255,346
(6) Developmental Disabilities Services Fund Account	\$ 61,773,664
(7) Medical Services Fund Account	\$ 4,958,217
(8) Department of Human Services Grants Fund Account	\$805,960,522
(9) Behavioral Health Services Fund Account	\$ 78,502,870
(10) State Services for the Blind Fund Account	\$ 1,880,943
(11) County Operations Fund Account	\$ 47,191,028
STATE GENERAL GOVERNMENT FUND	
(1) Department of Arkansas Heritage Fund Account	\$ 6,203,610
(2) Arkansas Agriculture Department Fund Account	\$ 15,851,863
(3) Department of Labor Fund Account	\$ 3,005,407
(4) Department of Higher Education Fund Account	\$ 3,291,808
(5) Higher Education Grants Fund Account	\$ 34,491,806
(6) Arkansas Economic Development Commission Fund Account	\$ 10,311,798

Name of Fund or Fund Account	Maximum Allocation
(7) Department of Correction Inmate Care and Custody Fund Account	\$298,842,000
(8) Department of Community Correction Fund Account	\$ 69,975,623
(9) State Military Department Fund Account	\$ 9,466,483
(10) Parks and Tourism Fund Account	\$ 22,607,437
(11) Arkansas Department of Environmental Quality Fund Account	\$ 4,210,633
(12) Miscellaneous Agencies Fund Account	\$ 56,788,049
COUNTY AID FUND	\$ 19,645,067
COUNTY JAIL REIMBURSEMENT FUND	\$ 9,453,607
CRIME INFORMATION SYSTEM FUND	\$ 3,681,833
CHILD SUPPORT ENFORCEMENT FUND	\$ 12,951,328
PUBLIC HEALTH FUND	\$ 90,838,467
MERIT ADJUSTMENT FUND	\$-
MOTOR VEHICLE ACQUISITION REVOLVING FUND	\$-
MUNICIPAL AID FUND	\$ 27,372,099
DEPARTMENT OF ARKANSAS STATE POLICE FUND	\$ 62,293,971
DEPARTMENT OF WORKFORCE SERVICES FUND	\$ 3,775,642
INSTITUTIONS OF HIGHER EDUCATION	
(1) ARKANSAS STATE UNIVERSITY FUND	\$ 56,856,765
(2) ARKANSAS TECH UNIVERSITY FUND	\$ 31,535,222
(3) HENDERSON STATE UNIVERSITY FUND	\$ 18,713,847
(4) SOUTHERN ARKANSAS UNIVERSITY FUND	\$ 15,449,575
(5) UNIVERSITY OF ARKANSAS FUND	\$116,761,613
(6) UNIVERSITY OF ARKANSAS FUND-ARCHEOLOGICAL SURVEY	\$ 2,327,380
(7) UNIVERSITY OF ARKANSAS FUND-DIVISION OF AGRICULTURE	\$ 62,800,138
(8) UNIVERSITY OF ARKANSAS FUND-CLINTON SCHOOL	\$ 2,295,575
(9) UNIVERSITY OF ARKANSAS FUND-CRIMINAL JUSTICE INSTITUTE	\$ 1,825,769
(10) SCHOOL FOR MATH, SCIENCE, AND ARTS FUND	\$ 1,113,015
(11) UNIVERSITY OF ARKANSAS AT FORT SMITH FUND	\$ 20,245,166

Name of Fund or Fund Account	Maximum Allocation
(12) UNIVERSITY OF ARKANSAS AT LITTLE ROCK FUND	\$ 59,841,915
(13) UNIVERSITY OF ARKANSAS MEDICAL CEN- TER FUND	\$ 95,656,661
(14) UNIVERSITY OF ARKANSAS MEDICAL CEN- TER FUND - CHILD SAFETY CENTER	\$ 720,588
(15) UNIVERSITY OF ARKANSAS MEDICAL CEN- TER FUND - INDIGENT CARE	\$ 5,342,181
(16) UNIVERSITY OF ARKANSAS MEDICAL CEN- TER FUND - CHILD ABUSE/RAPE/DOMESTIC VIOLENCE	\$ 735,000
(17) UNIVERSITY OF ARKANSAS MEDICAL CEN- TER FUND - PEDIATRICS/PSYCHIATRIC RESEARCH	\$ 1,950,000
(18) UNIVERSITY OF ARKANSAS AT MONTI- CELLO FUND	\$ 15,832,510
(19) UNIVERSITY OF ARKANSAS AT PINE BLUFF FUND	\$ 25,229,737
(20) UNIVERSITY OF CENTRAL ARKANSAS FUND	\$ 52,284,021
(21) ARKANSAS NORTHEASTERN COLLEGE FUND	\$ 8,577,052
(22) ARKANSAS STATE UNIVERSITY - BEEBE FUND	\$ 12,044,916
(23) ARKANSAS STATE UNIVERSITY - MOUN- TAIN HOME FUND	\$ 3,582,223
(24) ARKANSAS STATE UNIVERSITY - NEWPORT FUND	\$ 5,992,293
(25) COSSATOT COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 3,351,626
(26) EAST ARKANSAS COMMUNITY COLLEGE FUND	\$ 5,788,058
(27) MID-SOUTH COMMUNITY COLLEGE FUND	\$ 3,818,117
(28) NATIONAL PARK COMMUNITY COLLEGE FUND	\$ 8,943,803
(29) NORTH ARKANSAS COLLEGE FUND	\$ 7,966,091
(30) NORTHWEST ARKANSAS COMMUNITY COL- LEGE FUND	\$ 10,084,563
(31) PHILLIPS COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 9,063,088
(32) RICH MOUNTAIN COMMUNITY COLLEGE FUND	\$ 3,201,250
(33) SAU - TECH FUND	\$ 5,639,168

Name of Fund or Fund Account	Maximum Allocation
(34) SAU - TECH FUND-ARKANSAS ENVIRONMENTAL TRAINING ACADEMY	\$ 368,404
(35) SAU - TECH FUND-ARKANSAS FIRE TRAINING ACADEMY	\$ 1,651,221
(36) SOUTH ARKANSAS COMMUNITY COLLEGE FUND	\$ 5,994,316
(37) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT BATESVILLE FUND	\$ 4,050,586
(38) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT HOPE FUND	\$ 4,491,997
(39) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT MORRILTON FUND	\$ 4,787,010
(40) BLACK RIVER TECHNICAL COLLEGE FUND	\$ 6,049,404
(41) COLLEGE OF THE OUACHITAS FUND	\$ 3,527,261
(42) OZARKA COLLEGE FUND	\$ 2,988,694
(43) PULASKI TECHNICAL COLLEGE FUND	\$ 14,457,088
(44) SOUTHEAST ARKANSAS COLLEGE FUND	\$ 5,636,798

History. Acts 1973, No. 750, § 11; 1974 (1st Ex. Sess.), No. 90, § 1; 1975, No. 868, § 15; 1977, No. 955, § 1; 1977 (1st Ex. Sess.), No. 7, § 1; 1979, No. 1115, § 1; 1981, No. 937, § 1; 1983, No. 801, § 12; 1983 (1st Ex. Sess.), No. 119, § 1; 1985, No. 888, § 25; A.S.A. 1947, § 13-515; Acts 1987, No. 928, § 15; 1989, No. 629, § 15; 1991, No. 1135, § 14; 1993, No. 1073, § 32; 1995, No. 1163, § 32; 1997, No. 1248, § 29; 1999, No. 1463, § 31; 2001, No. 1646, § 30; 2003 (1st Ex. Sess.), No. 55, § 40; 2005, No. 2282, § 17; 2005, No. 2316, § 17; 2007, No. 1032, § 35; 2007, No. 1201, § 35; 2009, No. 1440, § 8; 2009, No. 1441, § 8; 2010, No. 262, § 13; 2010, No. 296, § 13; 2011, No. 1095, § 17; 2011, No. 1115, § 17; 2012, No. 271, § 7; 2012, No. 287, § 7.

Amendments. The 2012 amendment by identical acts Nos. 271 and 287 substituted "2012-2013" for "2011-2012" in the section heading; substituted "four billion seven hundred twenty-seven million five hundred thousand dollars (\$4,727,500,000)" for "four billion five hundred sixty-four million twenty-five thousand dollars (\$4,564,025,000)" in the introductory language; under the "INSTITUTIONS OF HIGHER EDUCATION" heading, inserted present (16) and (17) and redesignated the remaining subdivisions accordingly; rewrote the dollar amounts under the "Maximum Allocation" heading throughout the section; deleted the former last paragraph and former (b).

SUBCHAPTER 5 — BUDGET STABILIZATION TRUST FUND

19-5-506. Financial aid programs.

A.C.R.C. Notes. Acts 2012, No. 247, § 18, provided: "LOANS. In order to provide timely payments under financial aid appropriations made in this Act, the Chief Fiscal Officer of the State is authorized to provide loans from the Budget Stabilization Trust Fund to make available all

funds attributable to the financial aid programs under the then current official revenue estimates. In the event of an unanticipated state revenue shortfall, any such loans remaining at the end of a fiscal year shall be repaid from revenues distributed in the first two months of the

next fiscal year. Funds for appropriations made in this Act for purposes other than financial aid shall not be affected by the application of this provision.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 6 — MUNICIPAL AND COUNTY AID FUNDS

A.C.R.C. Notes. Acts 2012, No. 208, § 11, provided: "LOANS TO CITIES AND COUNTIES. On July 1 of each fiscal year, the Chief Fiscal Officer of the State shall request a transfer by the State Treasurer from the Budget Stabilization Trust Fund to the County Aid Fund and to the Municipal Aid Fund to assist the various cities and counties in meeting cash flow needs early in the state fiscal year. The transfer shall be a loan to be repaid in equal installments from general revenue distributions each month during the fiscal year for which the loan was made and shall be in addition to any other loans authorized by law for the County Aid and Municipal Aid Funds. The amount of such loan for each fiscal year shall be \$3,517,657 to the Municipal Aid Fund and \$1,906,079 to the County Aid Fund, or so much thereof as may be available in the Budget Stabilization Trust Fund as determined by the Chief Fiscal Officer of the State. Upon such transfer being completed, the State Treasurer shall immediately distribute such funds to each of the several municipalities and counties in the same manner as general revenues are distributed.

"It is the intent of the General Assembly that the Chief Fiscal Officer of the State and the State Treasurer shall make every reasonable, and financially sound effort to insure that local governments receive the full amount of the loan authorized herein on July 1 of each year and that the monies authorized for local governments from general revenues be distributed in equal monthly payments.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 208, § 12, provided: "CARRY FORWARD. At the close of each fiscal year any unexpended funds for the County Aid and Municipal Aid line items shall be carried forward and made avail-

able for the same purpose for the next fiscal year.

"Any carry forward of unexpended balance of funding as authorized herein, may be carried forward under the following conditions:

"(1) Prior to June 30, 2012 the Agency shall by written statement set forth its reason(s) for the need to carry forward said funding to the Department of Finance and Administration Office of Budget;

"(2) The Department of Finance and Administration Office of Budget shall report to the Arkansas Legislative Council all amounts carried forward by the September Arkansas Legislative Council or Joint Budget Committee meeting which report shall include the name of the Agency, Board, Commission or Institution and the amount of the funding carried forward, the program name or line item, the funding source of that appropriation and a copy of the written request set forth in (1) above;

"(3) Each Agency, Board, Commission or Institution shall provide a written report to the Arkansas Legislative Council or Joint Budget Committee containing all information set forth in item (2) above, along with a written statement as to the current status of the project, contract, purpose etc. for which the carry forward was originally requested no later than thirty (30) days prior to the time the Agency, Board, Commission or Institution presents its budget request to the Arkansas Legislative Council/Joint Budget Committee; and

"(4) Thereupon, the Department of Finance and Administration shall include all information obtained in item (3) above in the budget manuals and/or a statement of non-compliance by the Agency, Board, Commission or Institution.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 9 — TRUST FUNDS**19-5-911. Second Injury Trust Fund.**

A.C.R.C. Notes. Acts 2012, No. 128, § 7, provided: "INVESTMENTS. All such funds as are held at any time in the Death and Permanent Total Disability Trust Fund, Second Injury Trust Fund, and the Workers' Compensation Fund shall be invested and reinvested to the extent fea-

sible, all such investments as authorized for use by the Office of the Treasurer shall be available to the listed funds. The movement of these funds into and out of investments shall be by fund transfers as directed by the Chief Executive Officer of the Workers' Compensation Commission."

19-5-924. Workers' Compensation Fund.

A.C.R.C. Notes. Acts 2012, No. 128, § 7, provided: "INVESTMENTS. All such funds as are held at any time in the Death and Permanent Total Disability Trust Fund, Second Injury Trust Fund, and the Workers' Compensation Fund shall be invested and reinvested to the extent fea-

sible, all such investments as authorized for use by the Office of the Treasurer shall be available to the listed funds. The movement of these funds into and out of investments shall be by fund transfers as directed by the Chief Executive Officer of the Workers' Compensation Commission."

19-5-925. Death and Permanent Total Disability Trust Fund.

A.C.R.C. Notes. Acts 2012, No. 128, § 7, provided: "INVESTMENTS. All such funds as are held at any time in the Death and Permanent Total Disability Trust Fund, Second Injury Trust Fund, and the Workers' Compensation Fund shall be invested and reinvested to the extent fea-

sible, all such investments as authorized for use by the Office of the Treasurer shall be available to the listed funds. The movement of these funds into and out of investments shall be by fund transfers as directed by the Chief Executive Officer of the Workers' Compensation Commission."

19-5-945. Court Awards Fund.

A.C.R.C. Notes. Acts 2012, No. 284, § 14, provided: "COURT AWARDS FUND TRANSFER PROVISION. Monies deposited in the Court Awards Fund each fiscal year may be used for motor vehicle purchases and associated taxes and/or motor vehicle equipping and renovation costs, agency operational needs and capital improvements for the Department of Arkansas State Police. Provided however, funds received from the Special State Assets Forfeiture Fund shall be deposited into the Court Awards Fund to be used by the Department of Arkansas State Police for law enforcement purposes consistent with governing federal law. The Department of Arkansas State Police may also request a fund transfer from the Court Awards Fund or the Department of Arkansas State Police Fund to the Motor Vehicle

Acquisition Revolving Fund. The provisions of this section shall be subject to prior review and approval of the Arkansas Legislative Council or Joint Budget Committee.

"Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Arkansas State Police may operate more efficiently if some flexibility is provided to the Depart-

ment of Arkansas State Police authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is

not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

19-5-950. Crime Victims Reparations Revolving Fund.

A.C.R.C. Notes. Acts 2012, No. 281, § 61, provided: “YEARLY FUND TRANSFERS. On July 1, 2010 and each July 1, thereafter, if the fund balance of the Crime Victims Reparation Revolving Fund falls below one million dollars (\$1,000,000), the Chief Fiscal Officer of the State may transfer on his or her books and those of the State Treasurer and the Auditor of the State a sum not to exceed one million dollars (\$1,000,000) or so much thereof as is available from fund

balances that exceed seven million dollars (\$7,000,000) as determined by the Chief Fiscal Officer of the State, from the State Administration of Justice Fund to the Crime Victims Reparations Revolving Fund to provide funds for personal services, operating expenses and claims for the Office of the Attorney General — Crime Victims Reparations Program.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 10 — MISCELLANEOUS FUNDS

SECTION.

19-5-1011. Crime Information System Fund.

Effective Dates. Acts 2012, No. 283, § 15: July 1, 2012. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2012 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2012 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2012.”

19-5-1002. Motor Vehicle Acquisition Revolving Fund.

A.C.R.C. Notes. Acts 2012, No. 284, § 16, provided: “MOTOR VEHICLE ACQUISITION REVOLVING FUND — MOTOR VEHICLE PURCHASES/RENOVATION. At least fifty percent (50%) of the general revenues and/or general improvement funds deposited into the Motor Ve-

hicle Acquisition Revolving Fund shall be used for motor vehicle purchases and/or motor vehicle renovation costs for the Department of Arkansas State Police.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

19-5-1009. Miscellaneous Revolving Fund.

A.C.R.C. Notes. Acts 2012, No. 286, § 11, provided: "REIMBURSEMENT. The Miscellaneous Revolving Fund shall be reimbursed in the manner provided by

law.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

19-5-1011. Crime Information System Fund.

(a)(1) The Crime Information System Fund shall consist of those special revenues as specified in §§ 19-6-301(14) and 19-6-301(235) and fifty percent (50%) of § 19-6-301(176) of the Revenue Classification Law, § 19-6-101 et seq., allocations of general revenues as authorized by the General Assembly, moneys transferred or deposited from the State Administration of Justice Fund, and such federal grants and aid or reimbursements as may be received.

(2) The fund shall be used for the maintenance, operation, improvement, and necessary expenditures for administering the Arkansas Crime Information System.

(b) The then-current year allocations of general revenues not used or needed for current year operations shall be transferred by the Chief Fiscal Officer of the State to the General Revenue Allotment Reserve Fund.

(c) Beginning July 1, 2012, excluding the disposal fees that are to be deposited into the Marketing Board Fund under § 8-6-607(4), the first one hundred twenty-five thousand dollars (\$125,000) of fees collected each fiscal year under § 8-6-607 shall be deposited into the State Treasury and credited to the Crime Information System Fund to be used exclusively for the scrap metal log book program.

History. Acts 1973, No. 750, § 7; 1981, No. 938, § 8; A.S.A. 1947, § 13-523; Acts 1993, No. 1073, § 13; 1997, No. 1248, § 20; 1999, No. 1463, § 20; 2007, No.

1032, § 19; 2007, No. 1201, § 19; 2012, No. 283, § 11.

Amendments. The 2012 amendment added (c).

19-5-1020. Department of Human Services Renovation Fund.

A.C.R.C. Notes. Acts 2012, No. 157, § 15, provided: "HUMAN SERVICES RENOVATION FUND. Department of Human Services Renovation Fund.

"(a) There is established on the books of the Treasurer of State, Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the Department of Human Services Renovation Fund.

"(b) This fund shall be used for constructing, acquiring, renovating, maintaining, repairing, and equipping facilities of the Department of Human Services and for paying disallowances by the federal government.

"(c) The fund shall consist of:

"(1) Federal reimbursement received by the Department of Human Services and deposited in the various fund accounts of the department; and

"(2) General revenues transferred from the Division of Youth Services, the Division of Behavioral Health, and the Division of Developmental Disabilities Services for the purposes of repairing, renovating, equipping, acquiring and constructing Department of Human Services facilities with an annual maximum of five million dollars (\$5,000,000). The projects for which these transfers are authorized must be projects which were unanticipated during the preceding regular ses-

sion of the Arkansas General Assembly and must be projects which, if not carried out in the interim period between regular sessions of the Arkansas General Assembly would cause greater harm to the facilities, clients or programs of the Department of Human Services than to wait until the next regular session.

"(3) Other non-general revenue funds as may be available within the Department of Human Services that can be used for the purposes of this fund.

"(d)(1) At the request of the Director of the Department of Human Services, and upon certification of the availability of such funds, the Chief Fiscal Officer of the State shall initiate the necessary transfer documents to reflect the transfer on the books of record of the Treasurer of State, the Auditor of State, the Chief Fiscal Officer of the State, and the Department of Human Services.

"(2) The Director of the Department of Human Services shall submit any transfer plan to and must receive approval of the plan from the Chief Fiscal Officer of the State, the Governor and the Arkansas Legislative Council prior to the effective date of the transfer.

"(e) Provided, that any non-general revenue funding that may remain in the fund at the end of any fiscal year shall be carried over into the next fiscal year and all obligated general revenue funding that may remain in the fund at the end of any

fiscal year shall be carried over into the next fiscal year to satisfy such legal and contractual obligations that have been entered into prior to the end of the fiscal year.

"(f) Determining the amount of funds appropriated to a state agency is the prerogative of the General Assembly and is usually accomplished by delineating specific line items and by identifying the appropriation and funding attached to that line item. The General Assembly has determined that the Department of Human Services could be operated more efficiently if some flexibility is given to that agency. That flexibility is being accomplished by providing transfer authority in subsection (d) of this section, and since the General Assembly has granted the agency broad powers under the transfer authority concept, it is both necessary and appropriate that the General Assembly maintain oversight of the utilization of the transfer authority by requiring prior approval of the Legislative Council in the utilization of this transfer authority. Therefore, the requirement of approval by the Legislative Council is not a severable part of this section. If the requirement of approval by the Legislative Council is ruled unconstitutional by a court jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

19-5-1036. Research Development Fund.

A.C.R.C. Notes. Acts 2012, No. 247, § 20, provided: "BUILDING MAINTENANCE FUND. After the sum of \$13,200,000 has been deposited into the Higher Education Building Maintenance Fund, the next \$10,000,000 or so much as

is collected, is to be transferred to the Research Development Fund there to be used as provided by law.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

19-5-1088. Bail Bondsman Board Fund.

A.C.R.C. Notes. Acts 2012, No. 182, § 4, provided: "FUND TRANSFER. The Professional Bail Bondsman Licensing Board, at the end of each fiscal year, shall transfer all but twenty-five percent (25%)

of its fund balance to the General Revenue Fund Account in the State Treasury.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 11 — TRUST FUNDS CONTINUED

SECTION.

19-5-1103. Property Tax Relief Trust Fund.

Effective Dates. Identical Acts 2012, Nos. 271 and 287, § 10: July 1, 2012.

19-5-1103. Property Tax Relief Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special revenue fund to be known as the "Property Tax Relief Trust Fund".

(b) The fund shall consist of such revenues as generated by §§ 26-52-302(c), 26-52-317(c)(1)(B), 26-52-319(a)(3)(B), 26-53-107(c), 26-53-145(c)(1)(B), 26-53-148(a)(3)(B), 26-56-201(g)(1)(C), and 26-56-224(c)(2), and shall be used for such purposes as set out in § 26-26-310.

History. Acts 2001, No. 1646, § 10; 2007, No. 110, § 7; 2009, No. 1440, § 3; 2009, No. 1441, § 3; 2012, No. 271, § 3; 2012, No. 287, § 3.

Amendments. The 2012 amendment by identical acts Nos. 271 and 287 inserted "26-56-201(g)(1)(C)" in (b).

SUBCHAPTER 12 — MISCELLANEOUS FUNDS CONTINUED

SECTION.

19-5-1227. Educational Adequacy Fund.

Effective Dates. Identical Acts 2012, Nos. 271 and 287, § 10: July 1, 2012.

19-5-1227. Educational Adequacy Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Educational Adequacy Fund".

(b) After the Treasurer of State has made deductions from the revenues under § 19-5-203(b)(2)(A), the Educational Adequacy Fund shall consist of:

(1) All net revenues collected due to enactments of the Eighty-Fourth General Assembly meeting in Second Extraordinary Session, unless a different distribution of those additional net revenues is otherwise provided in the act creating those additional net revenues;

(2) The revenues credited to the Educational Adequacy Fund under § 26-54-113(b)(2);

(3) The revenues generated by §§ 26-52-302(d), 26-52-316, 26-52-317(c)(1)(C), 26-52-319(a)(3)(C), 26-53-107(d), 26-53-145(c)(1)(C), 26-53-148(a)(3)(C), 26-56-201(g)(1)(B), 26-56-224(c)(3), and 26-57-1002(d)(1)(A)(ii); and

(4) Other revenues as provided by law.

(c)(1) The Chief Fiscal Officer of the State will determine, from time to time, the amount of funds required from the Educational Adequacy Fund which, when added to other resources available to the Department of Education Public School Fund Account of the Public School Fund and the Department of Education Fund Account of the Education Fund, is needed to fulfill the financial obligation of the state to provide an adequate educational system as authorized by law and shall certify the amounts to the Treasurer of State.

(2) At the end of each month, the Treasurer of State shall transfer all moneys available from the Educational Adequacy Fund to the Department of Education Public School Fund Account of the Public School Fund and to the Department of Education Fund Account of the Education Fund until the sum of all transfers from the Educational Adequacy Fund equals the amounts determined in subdivision (c)(1) of this section, there to be used as determined by law.

(d) In the event the Chief Fiscal Officer of the State determines that the transfers from the Educational Adequacy Fund, when added to the other resources available to the Department of Education Public School Fund Account of the Public School Fund, are not sufficient to meet the state's financial obligation to provide an adequate educational system as authorized by law, the additional amount required shall be transferred from the other funds and fund accounts, except the Educational Facilities Partnership Fund Account, within §§ 19-5-402 and 19-5-404(a) [repealed] based upon the proportion that each of the remaining fund and fund accounts, excluding the Educational Facilities Partnership Fund Account, bears to the total of the remaining funds and fund accounts in §§ 19-5-402 and 19-5-404(a) [repealed].

History. Acts 2003 (2nd Ex. Sess.), No. 1440, § 5; 2009, No. 1441, § 5; 2012, No. 94, § 5; 2003 (2nd Ex. Sess.), No. 107, 271, § 4; 2012, No. 287, § 4.

§ 11; 2003 (2nd Ex. Sess.), No. 108, § 1; **Amendments.** The 2012 amendment
2005, No. 2131, § 35; 2006 (1st Ex. Sess.), by identical acts Nos. 271 and 287 in-
No. 20, § 10; 2007, No. 110, § 8; 2009, No. inserted "26-56-201(g)(1)(B)" in (b)(3).

CHAPTER 6

REVENUE CLASSIFICATION LAW

SUBCHAPTER.

4. SPECIAL REVENUE FUNDS.

SUBCHAPTER 4 — SPECIAL REVENUE FUNDS

SECTION.

19-6-450. Individual Sewage Disposal

Systems
Fund.

Improvement

19-6-410. Oil and Gas Commission Fund.

A.C.R.C. Notes. Acts 2012, No. 272, § 6, provided: "FUND TRANSFER. The Oil and Gas Commission, after receiving review from the Chief Fiscal Officer of the State and the Legislative Council, may request the Chief Fiscal Officer to transfer

up to \$750,000 per year on his or her books and the books of the State Treasurer and the Auditor of the State from the Oil and Gas Commission Fund to the Abandoned and Orphaned Well Plugging Fund."

19-6-450. Individual Sewage Disposal Systems Improvement Fund.

The Individual Sewage Disposal Systems Improvement Fund shall consist of that portion of those special revenues as specified in § 19-6-301(58) there to be used by the Environmental Health Services Division of the Department of Health for, and in the manner recommended by, the Individual Sewage Disposal Systems Advisory Committee for implementation of the utilization and application of alternate and experimental individual sewage disposal systems as set out in the Arkansas Sewage Disposal Systems Act, § 14-236-101 et seq.

History. Acts 1973, No. 808, § 14; 1985, No. 65, § 7; A.S.A. 1947, § 13-503.13; Acts 1989, No. 551, § 6; 1993, No. 1072, § 7.

Publisher's Notes. This section is being set out to correct an agency name and a statutory reference.

CHAPTER 10

CLAIMS AGAINST THE STATE

SUBCHAPTER 2 — ARKANSAS STATE CLAIMS COMMISSION

19-10-212. Reports of agency liability.

A.C.R.C. Notes. Acts 2012, No. 153, § 15, provided: "CLAIMS AWARD REPORTING. It is the intent of the General Assembly that when any state agency, board, commission or institution of higher education admits liability to a claim filed with the State Claims Commission and the claim involves a contract with a state agency, board, commission or institution of higher education or the claim exceeds twelve thousand five hundred dollars (\$12,500) that such agency, board, commission or institution of higher education file a written report thereof to the Litigation Subcommittee of the Arkansas Legis-

lative Council. Such report shall include a concise statement of facts with an explanation of the agency's liability. Provided further, such report shall be filed with the Litigation Subcommittee within thirty (30) days after the claim has been adjudicated by the State Claims Commission."

Acts 2012, No. 259, § 14, provided: "CLAIMS AWARD REPORTING. It is the intent of the General Assembly that when any state agency, board, commission or institution of higher education admits liability to a claim filed with the State Claims Commission and the claim involves a contract with a state agency,

board, commission or institution of higher education or the claim exceeds twelve thousand five hundred dollars (\$12,500) that such agency, board, commission or institution of higher education file a written report thereof to the Litigation Subcommittee of the Arkansas Legislative

Council. Such report shall include a concise statement of facts with an explanation of the agency's liability. Provided further, such report shall be filed with the Litigation Subcommittee within thirty (30) days after the claim has been adjudicated by the State Claims Commission."

19-10-213. Agency to pay claim.

A.C.R.C. Notes. Acts 2012, No. 56, § 4, provided: "EMPLOYMENT COMPENSATION CLAIMS. The Clerk of the State Claims Commission shall not distribute any warrants prepared under the provisions of this Act for awards made by the Arkansas State Claims Commission for employment compensation claims. Upon the award by the State Claims Commission of an employment compensation claim, the Clerk of the State Claims Commission shall notify the affected state agency and the Department of Finance and Administration — Office of Personnel Management of such amounts that are due and payable. The affected state agency shall then process the award through the State Mechanized Payroll System.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 153, § 13, provided: "CLAIMS FROM CASH FUNDS. In the event that any claim authorized herein is determined to be a valid claim against the State and the claim is to be paid from funds not in the State Treasury, the Clerk of the State Claims Commission shall notify the agency against which the claim is to be charged of the amount of such claims. Upon receipt of such notification, the state agency shall forthwith deliver a check to the Clerk of the State Claims Commission who shall deposit the same as a non-revenue receipt into the Miscellaneous Revolving Fund from which he shall disburse the amount of the claim to the claimant."

Acts 2012, No. 153, § 14, provided: "EMPLOYMENT COMPENSATION CLAIMS. The Clerk of the State Claims Commission shall not distribute any warrants prepared under the provisions of this Act for awards made by the Arkansas State Claims Commission for employment compensation claims. Upon the award by

the State Claims Commission of an employment compensation claim, the Clerk of the State Claims Commission shall notify the affected state agency and the Department of Finance and Administration — Office of Personnel Management of such amounts that are due and payable. The affected state agency shall then process the award through the State Mechanized Payroll System."

Acts 2012, No. 259, § 10, provided: "ARKANSAS DEPARTMENT OF HUMAN SERVICES CLAIMS. For any claims in this Act appropriated to the Department of Human Services, the Clerk of the State Claims Commission shall consult with the Department of Human Services and the Chief Fiscal Officer of the State to determine the division and funds to which liability should be assigned and from which the warrants shall be drawn. The Clerk of the State Claims Commission shall initiate the appropriate transfers as may be required and as approved by the Chief Fiscal Officer of the State."

Acts 2012, No. 259, § 11, provided: "ARKANSAS DEPARTMENT OF HEALTH CLAIMS. For any claims in this Act appropriated to the Department of Health, the Clerk of the State Claims Commission shall consult with the Department of Health and the Chief Fiscal Officer of the State to determine the division and funds to which liability should be assigned and from which the warrants shall be drawn. The Clerk of the State Claims Commission shall initiate the appropriate transfers as may be required and as approved by the Chief Fiscal Officer of the State."

Acts 2012, No. 259, § 12, provided: "CLAIMS FROM CASH FUNDS. In the event that any claim authorized herein is determined to be a valid claim against the State and the claim is to be paid from funds not in the State Treasury, the Clerk of the State Claims Commission shall notify the agency against which the claim is

to be charged of the amount of such claims. Upon receipt of such notification, the state agency shall forthwith deliver a check to the Clerk of the State Claims Commission who shall deposit the same as a non-revenue receipt into the Miscellaneous Revolving Fund from which he shall disburse the amount of the claim to the claimant."

Acts 2012, No. 259, § 13, provided: "EMPLOYMENT COMPENSATION CLAIMS. The Clerk of the State Claims Commission shall not distribute any warrants prepared under the provisions of

this Act for awards made by the Arkansas State Claims Commission for employment compensation claims. Upon the award by the State Claims Commission of an employment compensation claim, the Clerk of the State Claims Commission shall notify the affected state agency and the Department of Finance and Administration — Office of Personnel Management of such amounts that are due and payable. The affected state agency shall then process the award through the State Mechanized Payroll System."

CHAPTER 12

TOBACCO SETTLEMENT PROCEEDS ACT

A.C.R.C. Notes. Acts 2012, No. 52, § 8, provided: "POSITIONS.

"(a) Nothing in this act shall be construed as a commitment of the State of Arkansas or any of its agencies or institutions to continue funding any position paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the position.

"(b) State funds will not be used to replace Tobacco Settlement funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

"(c) A disclosure of the language contained in (a) and (b) of this Section shall be made available to all new hire and current positions paid from the proceeds of the Tobacco Settlement by the Tobacco Settlement Commission.

"(d) Whenever applicable the information contained in (a) and (b) of this Section shall be included in the employee handbook and/or Professional Services Contract paid from the proceeds of the Tobacco Settlement.

Acts 2012, No. 87, § 6, provided: "POSITIONS.

"(a) Nothing in this act shall be construed as a commitment of the State of Arkansas or any of its agencies or institutions to continue funding any position paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the position.

"(b) State funds will not be used to

replace Tobacco Settlement funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

"(c) A disclosure of the language contained in (a) and (b) of this Section shall be made available to all new hire and current positions paid from the proceeds of the Tobacco Settlement by the Minority Health Commission.

"(d) Whenever applicable the information contained in (a) and (b) of this Section shall be included in the employee handbook and/or Professional Services Contract paid from the proceeds of the Tobacco Settlement.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 192, § 6, provided: "POSITIONS.

"(a) Nothing in this act shall be construed as a commitment of the State of Arkansas or any of its agencies or institutions to continue funding any position paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the position.

"(b) State funds will not be used to replace Tobacco Settlement funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

"(c) A disclosure of the language contained in (a) and (b) of this Section shall be made available to all new hire and current positions paid from the proceeds

of the Tobacco Settlement by the Tobacco Settlement Commission.

“(d) Whenever applicable the information contained in (a) and (b) of this Section shall be included in the employee handbook and/or Professional Services Contract paid from the proceeds of the Tobacco Settlement.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 206, § 5, provided: “POSITIONS.

“(a) Nothing in this act shall be construed as a commitment of the State of Arkansas or any of its agencies or institutions to continue funding any position paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the position.

“(b) State funds will not be used to replace Tobacco Settlement funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

“(c) A disclosure of the language contained in (a) and (b) of this Section shall be made available to all new hire and current positions paid from the proceeds of the Tobacco Settlement by the Tobacco Settlement Commission.

“(d) Whenever applicable the information contained in (a) and (b) of this Section shall be included in the employee handbook and/or Professional Services Contract paid from the proceeds of the Tobacco Settlement.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 207, § 9, provided: “POSITIONS.

“(a) Nothing in this act shall be construed as a commitment of the State of Arkansas or any of its agencies or institutions to continue funding any position paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the position.

“(b) State funds will not be used to replace Tobacco Settlement funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

“(c) A disclosure of the language contained in (a) and (b) of this Section shall

be made available to all new hire and current positions paid from the proceeds of the Tobacco Settlement by the Tobacco Settlement Commission.

“(d) Whenever applicable the information contained in (a) and (b) of this Section shall be included in the employee handbook and/or Professional Services Contract paid from the proceeds of the Tobacco Settlement.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 217, § 6, provided: “POSITIONS.

“(a) Nothing in this act shall be construed as a commitment of the State of Arkansas or any of its agencies or institutions to continue funding any position paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the position.

“(b) State funds will not be used to replace Tobacco Settlement funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

“(c) A disclosure of the language contained in (a) and (b) of this Section shall be made available to all new hire and current positions paid from the proceeds of the Tobacco Settlement by the Tobacco Settlement Commission.

“(d) Whenever applicable the information contained in (a) and (b) of this Section shall be included in the employee handbook and/or Professional Services Contract paid from the proceeds of the Tobacco Settlement.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 264, § 6, provided: “POSITIONS.

“(a) Nothing in this act shall be construed as a commitment of the State of Arkansas or any of its agencies or institutions to continue funding any position paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the position.

“(b) State funds will not be used to replace Tobacco Settlement funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

“(c) A disclosure of the language contained in (a) and (b) of this Section shall be made available to all new hire and current positions paid from the proceeds of the Tobacco Settlement by the Tobacco Settlement Commission.

“(d) Whenever applicable the information contained in (a) and (b) of this section

shall be included in the employee handbook and/or Professional Services Contract paid from the proceeds of the Tobacco Settlement.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 1 — TOBACCO SETTLEMENT PROCEEDS ACT

A.C.R.C. Notes. Acts 2012, No. 264, § 10, provided: “LEGISLATIVE INTENT. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriation contained in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by Initiated Act 1 of 2000, the Agency Requests, Executive Recommendations and Legislative Rec-

ommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

19-12-116. Establishment and administration of Medicaid Expansion Program.

A.C.R.C. Notes. Acts 2012, No. 52, § 6, provided: “MEDICAID EXPANSION PROGRAM — PAYING ACCOUNTS. The Medicaid Expansion Program as established by Initiated Act 1 of 2000 shall be a separate and distinct component embracing (1) expanded Medicaid coverage and benefits to pregnant women; (2) expanded inpatient and outpatient hospital reimbursements and benefits to adults aged nineteen (19) to sixty-four (64); (3) expanded non-institutional coverage and benefits to adults aged 65 and over; and (4) creation and provision of a limited benefit package to adults aged nineteen

(19) to sixty-four (64), to be administered by the Department of Human Services. Separate Paying Accounts shall be established for the Medicaid Expansion Program as designated by the Chief Fiscal Officer of the State, to be used exclusively for the purpose of drawing down federal funds associated with the federal share of expenditures and for the state share of expenditures transferred from the Medicaid Expansion Program Account or for any other appropriate state match funds.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

19-12-117. Establishment of the Arkansas Tobacco Settlement Commission.

A.C.R.C. Notes. Acts 2012, No. 217, § 3, provided: “INDEPENDENT MONITORING AND EVALUATION. The Arkansas Tobacco Settlement Commission shall file a quarterly progress report to the Public Health, Welfare and Labor Committees and shall hire an independent third party to perform monitoring and

evaluation of program expenditures made from tobacco settlement funds. This independent third party shall have appropriate experience in health, preventive resources, health statistics and evaluation expertise. The third party retained to perform such services shall prepare a biennial report to be delivered to the General

Assembly and the Governor by each August 1 preceding a regular session of the General Assembly. The report shall be accompanied by a recommendation from the Arkansas Tobacco Settlement Com-

mission as to the continued funding for each program.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

19-12-118. Monitoring and evaluation of programs.

A.C.R.C. Notes. Acts 2012, No. 217, § 3, provided: “INDEPENDENT MONITORING AND EVALUATION. The Arkansas Tobacco Settlement Commission shall file a quarterly progress report to the Public Health, Welfare and Labor Committees and shall hire an independent third party to perform monitoring and evaluation of program expenditures made from tobacco settlement funds. This independent third party shall have appropriate experience in health, preventive resources, health statistics and evaluation

expertise. The third party retained to perform such services shall prepare a biennial report to be delivered to the General Assembly and the Governor by each August 1 preceding a regular session of the General Assembly. The report shall be accompanied by a recommendation from the Arkansas Tobacco Settlement Commission as to the continued funding for each program.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

TITLE 20

PUBLIC HEALTH AND WELFARE

SUBTITLE 2. HEALTH AND SAFETY

CHAPTER 9

HEALTH FACILITIES AND SERVICES GENERALLY

A.C.R.C. Notes. Acts 2012, No. 157, § 17, provided: “NURSING/DIRECT CARE EDUCATION STIPEND PROGRAM. Special provision for a Nursing/Direct Care Education Stipend Program for the Department of Human Services is hereby authorized to pay from State and Federal Funds appropriated in each division Act. This program is for eligible nursing students who are attending accredited nursing institutions to become Registered or Licensed Practical Nurses, as well as Certified Nursing Assistants, Residential Care Assistants, Residential Care Technicians, Residential Care Supervisors and Behavioral Health Aides.

“The stipend is \$5,000 per person per year. Any student who is awarded and accepts a stipend is under employment commitment to the respective DHS Division and is required to work for that division, in a full-time employee status effective immediately upon graduation.

The student employment commitment is equal to the number of years the stipend was awarded and accepted. In the event of Employee/Student default of the employment commitment, the Employee/Student will be considered in breach of contract and repayment of the stipend will be required as specified in the Stipend Contract.

“Each division participating in the Education Stipend Program shall determine on an annual basis, the number of student stipends available.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 280, § 26, provided: “NURSING/DIRECT CARE EDUCATION STIPEND PROGRAM. Special provision for a Nursing/Direct Care Education Stipend Program for the Arkansas Department of Health (ADH) is hereby authorized to pay from funds appropri-

ated in this Act. This program is for eligible nursing students who are attending accredited nursing institutions to become Registered or Licensed Practical Nurses.

"The stipend is five thousand dollars (\$5,000) per person per year. Any student who is awarded and accepts a stipend is under an employment commitment to the ADH and is required to work in a full-time employee status effective immediately upon graduation. The student employment commitment is equal to the number of years the stipend was awarded and accepted. In the event of Employee/Student default of the employment commitment, the Employee/Student will be considered in breach of contract and repayment of the stipend will be required as specified in the Stipend Contract.

"The ADH shall determine, on an annual basis, the number of student stipends available due to the availability of funds and the need for direct care services.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 280, § 28, provided: "COMMUNITY HEALTH CENTERS. Allocation of state funding to Community Health Centers shall be prioritized to ensure that uninsured, under-insured, and underserved Arkansans' receive needed services in order to improve their health, with this funding to preserve and strengthen Community Health Centers and increase Arkansans access to quality primary and preventive health care. The Department of Health shall ensure that any Community Health Center that receives funding through this Act shall first seek to include, in accordance with federal rule and guidance, as many local providers of health care services as possible, such as dental, pharmacy, mental health, and other ancillary services, within each Community Health Center's service area, to participate in the provision of such

services as a contractor at a fair, reasonable prevailing rate. Community Health Centers will seek local providers, community, city, county, and state partners to participate in the planning for the development, and, as an employee or contractor, in the implementation of a new Community Health Center in an area of documented unmet need. In addition to reasonable prices, the availability and service quality levels provided by the private provider must meet or exceed the level of service quality provided, as established by the respective governing board, at similarly situated Community Health Centers through the state and at all times meet professional standards of competence and quality. Annually, the Department of Health shall require from the Community Health Centers the submission of performance indicators, to be determined by the Department of Health, reflecting, at a minimum, a listing of all services provided, fee schedules based on local prevailing rates and actual costs, sliding fee scales, and uniform data sets which identify the number of uninsured, Medicaid and Medicare patients and those patients which are below and above 200% of the federal poverty level. Local private providers within the service area that may have been significantly impacted by these services will be determined by the Department of Health. The Department of Health shall institute a procurement process for the allocation of funding provided through this Act, detailing that these and other requirements are factored into the allocation of any funding provided to Community Health Centers. In the implementation of this special language, the Department of Health is permitted, at its discretion, to allow individual applicants an implementation period of up to 90 days from the effective date of individual agreements to satisfy the requirements for private provider collaboration as specified above."

SUBCHAPTER 3 — HOSPITALS, CLINICS, ETC. — MISCELLANEOUS PROVISIONS

20-9-302. Abortion clinics, health centers, etc.

A.C.R.C. Notes. Acts 2012, No. 246, § 28, provided: “STATE FUND RESTRICTIONS. No state funds shall be used for abortion referral in public schools, or for abortion services. Funds shall be expended in accordance with Arkansas Code Annotated § 6-18-703.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 269, § 29, provided: “STATE FUND RESTRICTIONS. No state funds shall be used for abortion referral in public schools, or for abortion services. Funds shall be expended in ac-

cordance with Arkansas Code Annotated §6-18-703.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 280, § 29, provided: “STATE FUND RESTRICTIONS. No state funds shall be used for abortion referral in public schools, or for abortion services. Funds shall be expended in accordance with Arkansas Code Annotated § 6-18-703.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 5 — PEER REVIEW COMMITTEES

20-9-501. Definition.

CASE NOTES

Applicability.

Arkansas Supreme Court declined to create a new tort for negligent credentialing of a physician; under subdivision (2)(A) of this section, a statutory system was in place for the initial and ongoing

review of competency as part of the credentialing process to assure that health services were being performed in accordance with the appropriate standard of care. *Paulino v. QHG of Springdale, Inc.*, 2012 Ark. 55, — S.W.3d — (2012).

CHAPTER 10

LONG-TERM CARE FACILITIES AND SERVICES

SUBCHAPTER 12 — PROTECTION OF LONG-TERM CARE FACILITY RESIDENTS

20-10-1204. Residents' rights.

CASE NOTES

Dignity.

Trial court erred in a medical malpractice action in permitting a personal representative's expert to testify as to the meaning of dignity, as it was used in subdivision (a)(21) of this section; the

word dignity, simply because it was part of the statute, was not complex and did not mean something different than its ordinary and usually accepted meaning in common language. *Bedell v. Williams*, 2012 Ark. 75, — S.W.3d — (2012).

20-10-1209. Civil enforcement.**CASE NOTES****ANALYSIS**

Directed Verdict.
Jury Instructions.

Directed Verdict.

Directed verdict was appropriate in a case alleging a violation of the Arkansas Resident's Rights Act, even though it was not subsumed in a medical malpractice claim, because co-administrators made only conclusory arguments that they proffered sufficient evidence relating to proximate cause. They did not point to any evidence linking the alleged violations to a

resident's death or injuries. *Smith v. Heather Manor Care Ctr., Inc.*, 2012 Ark. App. 584, — S.W.3d —, 2012 Ark. App. LEXIS 704 (Oct. 24, 2012).

Jury Instructions.

Trial court erred in a medical malpractice action in not including in an instruction to the jury the causation element required in subsection (a) of this section when damages were sought for a violation of a nursing home resident's rights. *Bedell v. Williams*, 2012 Ark. 75, — S.W.3d — (2012).

SUBCHAPTER 22 — LONG-TERM CARE QUALITY ASSURANCE**20-10-2204. Proceedings and records confidential.****CASE NOTES****Certiorari.**

Petition for a writ of certiorari was not granted in two malpractice cases because it was sought as a remedy for an alleged error in a discovery order relating to a subpoena duces tecum, despite the claim

of privilege under subdivision (a)(2)(A) of this section, 42 U.S.C.S. § 1320c-9(a), and 42 U.S.C.S. § 1396r(b)(1)(B). An appeal provided an adequate remedy. *Ark. Found. v. Santarsiero*, 2012 Ark. 372, — S.W.3d — (2012).

CHAPTER 21**RADIATION PROTECTION****SUBCHAPTER 5 — NUCLEAR PLANNING AND RESPONSE GRANTS****20-21-504. Disbursal of funds.**

A.C.R.C. Notes. Acts 2012, No. 280, § 21, provided: "NUCLEAR DISASTER PLANNING GRANTS. The funds appropriated for Grants for Nuclear Planning shall be disbursed to those counties in this State which are required by state or federal regulation to maintain a Radiological Response Plan because of their close proximity to a nuclear electricity generating facility, and shall be issued solely for the purpose of defraying the cost of preparing for and participating in actual nuclear disaster incidents or practice nuclear disaster exercises. Each county shall be eli-

gible for that proportion of these funds as is determined fair and necessary under guidelines to be developed by the Arkansas Department of Health. However, a minimum of \$5,000 per county of said funds shall be utilized to support and operate a County Emergency Management Office. These county offices shall be prepared to respond to any Arkansas Nuclear I emergency. These funds shall be equally distributed to each Emergency Management Office in the following counties: Pope County, Johnson County, Yell County, Conway County and Logan

County.

“The funds appropriated for Grants for Nuclear Planning shall be distributed in quarterly installments by the Arkansas Department of Health to the Arkansas Department of Emergency Management for the sole purpose of defraying costs associated with preparing for and partici-

pating in actual nuclear disaster incidents or practice nuclear disaster emergency exercises involving nuclear electricity generating facilities in this State.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 27

MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

A.C.R.C. Notes. Acts 2012, No. 280, § 25, provided: “DEVELOPMENT RESTRICTIONS. In reviewing the impact on public health and safety of a plan for improvements to a public water system or public sewer system through the addition of distribution lines to a subdivision or commercial development, the Division of

Engineering of the Department of Health shall consider the effect of the plan on future development or zoning of adjoining properties.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 10 — REMOVAL OF ASBESTOS MATERIAL

20-27-1004. Powers and duties of the Arkansas Department of Environmental Quality.

A.C.R.C. Notes. Acts 2012, No. 274, § 36, provided: “ADEQ ASBESTOS PROGRAM. The fees collected pursuant to Arkansas Code 20-27-1004(5) shall be used by the department to fund operational expenses and to provide and train personnel to administer an asbestos program, as funding is available, including:

“(a) Personnel dedicated to issue certificates and licenses to qualified persons/companies, to perform audit of trainers, and to regularly update the ADEQ web page providing a listing of asbestos licensed parties;

“(b) Personnel who are trained as asbestos supervisors as defined by Arkansas Code 20-27-1003 and Arkansas Pollution Control and Ecology Commission Regulation No.21 to approve asbestos Notices of Intent, perform and coordinate asbestos inspections, conduct enforcement actions, and provide regulatory compliance information to assist the regulated community. Asbestos inspectors shall have personal protective equipment when needed to enter a regulated area; and

“(c) Other personnel as necessary to administer the asbestos program.”

SUBCHAPTER 15 — BODY PIERCING, BRANDING, AND TATTOOING

20-27-1501. Definitions.

RESEARCH REFERENCES

ALR. Regulation of Business of Tattooing. 67 A.L.R.6th 395.

20-27-1502. Unlawful to perform body art on a person under eighteen years of age.

RESEARCH REFERENCES

ALR. Regulation of Business of Tattooing. 67 A.L.R.6th 395.

20-27-1503. Department of Health to license, regulate, and inspect for health hazards.

RESEARCH REFERENCES

ALR. Regulation of Business of Tattooing. 67 A.L.R.6th 395.

SUBTITLE 3. MENTAL HEALTH

CHAPTER 47

TREATMENT OF THE MENTALLY ILL

SUBCHAPTER 2 — COMMITMENT AND TREATMENT

20-47-204. Voluntary admissions.

CASE NOTES

Change of Status.

Defendant state health care professionals owed no Fourteenth Amendment Due Process-level duty of care to a voluntary mental health facility patient, and even if her removal from suicide watch 3 days before she hanged herself and subdivision (2) of this section and § 20-47-210(c), gave

her involuntary status, plaintiff administratrix of her estate's Due Process claim failed because upon being discovered, she was no different than any unconscious patient in an emergency room and simple or professional negligence standards applied. *Shelton v. Ark. Dep't of Human Servs.*, 677 F.3d 837 (8th Cir. 2012).

20-47-207. Involuntary admission — Original petition.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Overt Act Requirement of State Statutes Providing for Commitment of

Sexually Dangerous Persons. 56 A.L.R.6th 647.

20-47-210. Immediate confinement — Initial evaluation and treatment.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Overt Act Requirement of State Statutes Providing for Commitment of Sexually Dangerous Persons. 56 A.L.R.6th 647.
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CASE NOTES

Due Process.

Defendant state health care professionals owed no Fourteenth Amendment Due Process-level duty of care to a voluntary mental health facility patient, and even if her removal from suicide watch 3 days before she hanged herself and § 20-47-204(2) and subsection (c) of this section gave her involuntary status, plaintiff ad-

ministratrix of her estate's Due Process claim failed because upon being discovered, she was no different than any unconscious patient in an emergency room and simple or professional negligence standards applied. *Shelton v. Ark. Dep't of Human Servs.*, 677 F.3d 837 (8th Cir. 2012).

20-47-215. Additional periods of involuntary admission — Petitions — Hearing.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Overt Act Requirement of State Statutes Providing for Commitment of Sexually Dangerous Persons. 56 A.L.R.6th 647.
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CHAPTER 48

TREATMENT OF THE DEVELOPMENTALLY DISABLED

SUBCHAPTER 1 — GENERAL PROVISIONS

20-48-105. Nonprofit community programs — Extension or expansion of services.

A.C.R.C. Notes. Acts 2012, No. 219, § 12, provided: “DEVELOPMENTAL DISABILITIES — GRANTS TO COMMUNITY BASED PROVIDERS. Funds allocated under the appropriation for community-based services, for Grants to Community Providers, in the Developmental Disabilities Services — Grants-in-Aid appropriation in this act shall be used only to provide services through private community based services licensed or certified by the Arkansas Division of Developmental Disabilities Services (DDS). Non-profit community-based programs licensed by the Division of Developmental Disabilities

Services are quasi-governmental instrumentalities of the state which provide supports and services to individuals who have a developmental disability or delay, who would otherwise require supports and services through state-operated programs and facilities owned by the State of Arkansas. When DDS licensed providers are involved in delivering services which are Medicaid reimbursable, they must enroll as a provider with the Arkansas Medicaid Program and must bill the Arkansas Medicaid Program for all covered services for eligible individuals.

“Services which are covered by the Ar-

kansas State Medicaid Program or under the Alternative Community Services Waiver Program (ACS) will be utilized to the maximum extent possible for any individual who is eligible for Medicaid coverage. It is the intent of this section that DDS, as a general policy, maximize the use of Medicaid funding available for appropriate services.

"The State shall require each provider funded from this Appropriation for community based services, including funding from the Grants/Patient Services Line, in the Developmental Disabilities Services — Operations appropriation, or from the Grants to Community Providers Line, in the Developmental Disabilities Services — Grants-in-Aid appropriation, to screen each individual to whom services are provided for a determination of eligibility or ineligibility for Medicaid coverage within thirty days of the first date that services are provided. It is the intent of this section to insure that wherever possible and appropriate, Medicaid funds are utilized for covered or waived services to individuals who are eligible for coverage under the Arkansas Medicaid Program or the ACS Waiver.

"Nothing in this Act shall prevent the Division or any provider from extending emergency services when appropriate measures have been taken in a timely manner to secure Medicaid eligibility.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 219, § 14, provided: "GRANTS IN AID — CONDITIONS FOR RECEIVING FUNDS. Private non-profit community-based programs licensed by the Department of Human Services, Developmental Disabilities Services, are eligible to receive funds appropriated for Grants to Community Providers in the Developmental Disabilities Services — Grants-in-Aid appropriation of this Act, and as a condition of receiving such funds they shall:

"1. Meet minimum standards of performance in the delivery of services to people with disabilities as defined by the Department of Human Services, Developmental Disabilities Services.

"2. Supply statistical and financial data to the Department of Human Services, Developmental Disabilities Services.

"3. Establish and maintain a sound financial management system in accordance with guidelines as set forth by the Department of Human Services.

"4. Establish and maintain community support programs designed to provide coordinated care and treatment to ensure ongoing involvement and individualized services for persons with disabilities. Every community support program shall provide services for persons with disabilities who reside within the respective area of the program.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 4 — HUMAN DEVELOPMENT CENTERS GENERALLY

A.C.R.C. Notes. Acts 2012, No. 219, § 13, provided: "DEVELOPMENTAL DISABILITIES — VOCATIONAL TRAINEES. The Division of Developmental Disabilities Services of the Department of Human Services is hereby authorized to provide employment opportunities for people with developmental disabilities residing at the Human Development Centers who work less than a competitive employment level.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 219, § 16, provided: "HUMAN DEVELOPMENT CENTERS AND COMMUNITY PROVIDERS.

"(A) The Developmental Disabilities

Services Board or the Department of Human Services shall not close any of the state administered Human Development Centers which are located at Conway, Arkadelphia, Jonesboro, Booneville, and Warren.

"(B) The Department of Human Services shall continue to accept clients for whom it has determined that therapy and residential services are needed at state administered Human Development Centers and Community Programs licensed by DDS shall continue to accept clients for whom it has been determined in accordance with federal law that are in need of services in the community.

"(C) Except for use as federal matching funds, no funds for community based ser-

vices licensed by DDS shall be transferred from Grants to Community Providers line item of the Developmental Disabilities Services — Grants-in-Aid appropriation unless the transfer(s) directly benefit(s) community based services for persons with developmental disabilities or from the appropriation for the Human Development Centers unless the transfer(s) directly benefit(s) the Human Development Centers.

“(D) Nor shall any general revenue funding as of July 1, 2012 from the Grants to Community Providers line item of the

Developmental Disabilities Services — Grants-in-Aid appropriation for persons with developmental disabilities or from any other general revenues as of July 1, 2012, applied as federal matching funds for community based services licensed by DDS on July 1, 2012 be reduced below the approved funding level on July 1, 2012; nor shall the general revenues applied as federal matching funds for the Human Development Centers be reduced below the approved funding level on July 1, 2012.”

SUBCHAPTER 5 — HUMAN DEVELOPMENT CENTERS — PROPERTY AND FINANCES

20-48-511. Developmental disabilities — Timber sales proceeds — Capital improvements and equipment.

A.C.R.C. Notes. Acts 2012, No. 218, § 12, provided: “YOUTH SERVICES — TIMBER SALES PROCEEDS — CAPITAL IMPROVEMENTS AND EQUIPMENT. The Division of Youth Services is authorized to use the administrative operating account for capital improvements to the physical plant and for the purchase of capital equipment by the Mansfield Youth Services Facility operated by the Department of Human Services, Division of Youth Services. The funds shall be held by the Department of Human Services, Division of Youth Services from the proceeds of the sale of timber that may be harvested from land owned by the Division of Youth Services. All funds deposited and all expenses shall be tracked separately. The harvesting of timber is specifically authorized to provide funds to finance capital improvements to the physical plant and for the purchase of major capital equipment by the Mansfield Facility from which the timber is sold.

“The Division of Youth Services shall report all income derived from the sale of timber to the Chief Fiscal Officer of the State and the Arkansas Legislative Council. Any contracts initiated for the harvesting and sale of timber shall be submitted to the Review Subcommittee of the Arkansas Legislative Council for prior review. All expenditures of funds derived from the

sale of timber will be expended in accordance with relevant state purchasing laws.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 219, § 15, provided: “DEVELOPMENTAL DISABILITIES — TIMBER SALES PROCEEDS — CAPITAL IMPROVEMENTS AND EQUIPMENT. The Division of Developmental Disabilities Services is authorized to use the administrative operating accounts for capital improvements to physical plants and for the purchase of capital equipment. The funds shall be held by the Department of Human Services, Division of Developmental Disabilities Services from the proceeds of the sale of timber that may be harvested from land owned by the Division of Developmental Disabilities Services. All funds deposited and all expenses shall be tracked separately. The harvesting of timber is specifically authorized to provide funds to finance capital improvements to the physical plants and for the purchase of major capital equipment.

“The Division of Developmental Disabilities Services shall report all income derived from timber management to the Chief Fiscal Officer of the State and the Arkansas Legislative Council. Any con-

tracts initiated for the harvesting of timber shall be submitted to the Review Subcommittee of the Arkansas Legislative Council for prior review. All expenditures of funds derived from the sale of timber

will be expended in accordance with relevant state purchasing laws.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBTITLE 4. FOOD, DRUGS, AND COSMETICS

CHAPTER 64

ALCOHOL AND DRUG ABUSE

SUBCHAPTER 3 — ARKANSAS DRUG ABUSE CONTROL ACT

20-64-302. Definitions.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Trademark Counterfeiting Statutes. 63 A.L.R.6th 303.

20-64-306. Prohibited acts.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Trademark Counterfeiting Statutes. 63 A.L.R.6th 303.

SUBTITLE 5. SOCIAL SERVICES

CHAPTER 76

PUBLIC ASSISTANCE GENERALLY

A.C.R.C. Notes. Acts 2012, No. 282, § 26, provided: "TANF STUDY. The Department of Workforce Services shall immediately proceed with issuing a Request for Proposals (RFP), or other appropriate methodology, requesting qualified vendors to submit proposals for the completion of a study to determine the best and most appropriate way to address the financial needs of grandparents raising grandchildren through the Temporary Assistance for Needy Families (TANF) Block Grant Program. Immediately upon receiving responses from qualified vendors, the Department shall immediately take steps to enter into a contract arrangement with the vendor that submits the lowest and/or most responsible response to the RFP and

begin the study. The contract shall be awarded no later than June 30, 2011.

"Questions to be addressed in the study shall include, but not be limited to:

"1) What program model is best for Arkansas?

"2) Which children will be eligible?

"3) Should payments be limited to relatives with legal guardianship, unrelated foster parents, or unrelated individuals with close ties to the child or family?

"4) What impact will these payments have on other public benefits currently received on behalf of these children?

"5) What agency will determine eligibility?

"6) What about child support obligations?

"7) Who will regulate residence compliance?"

"8) Will the program require criminal background checks? If yes, who will pay for it?"

"9) What is the actual financial impact for the TANF program?"

"10) What other funding sources exists for the proposed program?"

"The Department shall consider the findings of this study in conjunction with the Department's TANF Program Independent Evaluation Study and the evaluation of the Arkansas Career Pathways Initiative. In addition, the Department

shall duly consider the findings from the grandparents raising grandchildren study as they prepare their annual TANF budget.

"If the Department of Workforce Services fails to comply with all of the provisions of this Section by December 31, 2011, the Department shall immediately begin providing cash assistance payments to grandparents who are the legal guardians of their grandchildren, and whose incomes are below 100% of the Federal Poverty Level (FPL). These payments shall be paid at the rate of \$100 per month per grandparent household."

SUBCHAPTER 3 — SOCIAL SECURITY DISABILITY DETERMINATION

A.C.R.C. Notes. Acts 2012, No. 175, § 4, provided: "EXTRA HELP RESTRICTION. No extra help employee of Disability Determination for Social Security Administration shall be employed for a

period of time to exceed eighteen hundred (1800) hours in any single fiscal year.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 77

MEDICAL ASSISTANCE

A.C.R.C. Notes. Acts 2012, No. 250, § 13, provided: "STATE PLAN. The State Plan must include the provision of EPSDT services as those services are defined in §1396d(r). See §§ 1396a(a)(10)(A), 1396d(a)(4)(B); see also 1396a(a)(43). Section 1396d(r) lists in detail the screening services, vision services, dental services, and hearing services that the State Plan must expressly include, but with regard to treatment services, it states that EPSDT means "[s]uch other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan." 42 U.S.C. § 1396d(r)(5) (emphasis added). Reading §1396a, § 1396d(a), and § 1396d(r) together, we believe that the State Plan need not specifically list every treatment service conceivably available under the EPSDT mandate.

"The State Plan, however, must pay part or all of the cost of treatments to ameliorate conditions discovered by the screening process when those treatments meet the definitions set forth in § 1396a. See §1396d(r)(5); see also §§1396a(a)(10), 1396a (a)(43), and 1396d(a)(4)(B). The Arkansas State Plan states that the 'State will provide other health care described in [42 U.S.C. 1396d(a)] that is found to be medically necessary to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, even when such health care is not otherwise covered under the State Plan.' See State Plan Under Title XIX of the Social Security Act Medical Assistance Program, State Of Arkansas at §4.b. This provision Meets the EPSDT mandate of the Medicaid Act.

"We affirm the district court's decision to the extent that it holds that a Medicaid-Eligible individual has a federal right to early intervention day treatment when a physician recommends such treatment.

Section 1396d(r)(5) states that EPSDT includes any treatments or measures outlined in §1396d(a). There are twenty-seven sub-parts to §1396d(a), and we find that sub-part (a)(13), in particular, when read with the other sections of the Medicaid Act listed above, mandates that early intervention day treatment be provided when it is prescribed by a physician. See 42 U.S.C. §1396d(a)(13) (defining medical assistance reimbursable by "Medicaid as 'other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services recommended by a physician...for the maximum reduction of physical and mental disability and restoration of an individual to the best possible functional level'). Therefore, after CHMS clinic staff perform a diagnostic evaluation of an eligible child, if the CHMS physician prescribes early intervention day treatment as a service that would lead to the maximum reduction of medical and physical disabilities and restoration of the child to his or her best possible functional level, the Arkansas State Plan must reimburse the treatment. Because CHMS clinics are the only providers of early intervention day treatment, Arkansas must reimburse those clinics."

Acts 2012, No. 250, § 14, provided: "MEDICAL SERVICES — STATE MEDICAID PROGRAM/PERSONAL CARE PROGRAM.

"(a) It is the legislative intent that the Department of Human Services in its administration of the Arkansas Medicaid Program set forth Medicaid provider participation requirements for 'personal care providers' that will insure sufficient available providers to meet the required needs of all eligible recipients, to include insuring available in home services twenty-four (24) hours a day and seven (7) days a week for personal care.

"(b) For the purposes of this section, 'private care agencies' are defined as those providers licensed by the Department of Labor, certified as ElderChoices Providers and who furnish in home staffing services for respite, chore services, and homemaker services, and are covered by liability insurance of not less than one million dollars (\$1,000,000) covering their employees and independent contractors while they are engaged in providing ser-

vices, such as personal care, respite, chore services, and homemaker services.

"(c) The purpose of this section is to allow the private care agencies defined herein to be eligible to provide Medicaid reimbursed personal care services seven (7) days a week, and does not supercede Department of Human Services rules establishing monthly benefit limits and prior authorization requirements.

"(d) The availability of providers shall not require the Department of Human Services to reimburse for twenty-four (24) hours per day of personal care services.

"(e) The Arkansas Department of Human Services, Medical Services Division shall take such action as required by the Centers for Medicare and Medicaid Services to amend the Arkansas Medicaid manual to include, private care agencies, as qualified entities to provide Medicaid reimbursed personal care services.

"(f) The private care agencies shall comply with rules and regulations promulgated by the Arkansas Department of Health which shall establish a separate licensure category for the private care agencies for the provision of Medicaid reimbursable personal care services seven (7) days a week.

"(g) The Arkansas Department of Health shall supervise the conduct of the personal care agencies defined herein.

"(h) The purpose of this section is to insure the care provided by the private care agencies, is consistent with the rules and regulations of the Arkansas Department of Health.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 250, § 15, provided: "REVIEW OF RULES IMPACTING STATE MEDICAID COSTS.

"(a) In light of the rapidly rising potential costs to the State attributable to the Medicaid program and the importance of Medicaid expenditures to the health and welfare of the citizens of this State, the General Assembly finds it desirable to exercise more thorough review of future proposed changes to rules that might impact those costs or expenditures.

"(b) As used in this section, 'rule impacting state Medicaid costs' means a proposed rule, as defined by § 25-15-202(8), or a proposed amendment to an existing rule, as defined by § 25-15-202(8), that

would, if adopted, adjust Medicaid reimbursement rates, Medicaid eligibility criteria, or Medicaid benefits, including without limitation a proposed rule or a proposed amendment to an existing rule seeking to accomplish the following:

“(1) Reduce the number of individuals covered by Arkansas Medicaid;

“(2) Limit the types of services covered by Arkansas Medicaid;

“(3) Reduce the utilization of services covered by Arkansas Medicaid;

“(4) Reduce provider reimbursement;

“(5) Increase consumer cost-sharing;

“(6) Reduce the cost of administering Arkansas Medicaid;

“(7) Increase Arkansas Medicaid revenues;

“(8) Reduce fraud and abuse in the Arkansas Medicaid program;

“(9) Change any of the methodologies used for reimbursement of providers;

“(10) Seek a new waiver or modification of an existing waiver of any provision under Medicaid, Title XIX, of the Social Security Act, including a waiver that would allow a demonstration project;

“(11) Participate or seek to participate in Social Security Act Section 1115(a)(1) waiver authority that would allow operation of a demonstration project or program;

“(12) Participate or seek to participate in a Social Security Act Section 1115(a)(2) request for the Secretary of the Department of Health and Human Services to provide federal financial participation for costs associated with a demonstration project or program;

“(13) Implement managed care provisions under Section 1932 of Medicaid, Title XIX of the Social Security Act; or

“(14) Participate or seek to participate in the Centers for Medicare and Medicaid Services Innovation projects or programs.

“(c)(1) In addition to filing requirements under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and § 10-3-309, the Department of Human Services shall, at least thirty (30) days before the expiration of the period for public comment, file a proposed rule impacting state Medicaid costs or a proposed amendment to an existing rule impacting state Medicaid costs with the Senate Interim Committee on Public Health, Wel-

fare, and Labor and the House Interim Committee on Public Health, Welfare, and Labor, or, when the General Assembly is in session, with the Senate Committee on Public Health, Welfare, and Labor and the House Committee on Public Health, Welfare and Labor.

“(2) Any review of the proposed rule or proposed amendment to an existing rule by the Senate and House Interim Committees on Public Health, Welfare and Labor or the Senate and House Committees on Public Health, Welfare, and Labor shall occur within forty-five (45) days of the date the proposed rule or proposed amendment to an existing rule is filed with the committees.

“(d)(1) If adopting an emergency rule impacting state Medicaid costs, in addition to the filing requirements under the Arkansas Administrative Procedure Act, § 25-15-201 et seq. and § 10-3-309, the Department of Human Services shall notify the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the chair of the Senate Committee on Public Health, Welfare, and Labor, and the chair of the House Committee on Public Health, Welfare and Labor of the emergency rule and provide each of them a copy of the rule within five (5) business days of adopting the rule.

“(2) Any review of the emergency rule by the Senate and House Interim Committees on Public Health, Welfare and Labor or the Senate and House Committees on Public Health, Welfare, and Labor shall occur within forty-five (45) days of the date the emergency rule is provided to the chairs.

“(e)(1) The Joint Budget Committee may review a rule impacting state Medicaid costs during a regular, fiscal, or special session of the General Assembly.

“(2) Actions taken by the Joint Budget Committee when reviewing a rule impacting state Medicaid costs shall have the same effect as actions taken by the Legislative Council under § 10-3-309.

“(3) If the Joint Budget Committee reviews a rule impacting state Medicaid costs, it shall file a report of its actions with the Legislative Council as soon as practicable.

“(f) This section expires on June 30, 2013.”

SUBCHAPTER 1 — GENERAL PROVISIONS**20-77-101. Cost-sharing charges for medically indigent.****CASE NOTES****Public Policy and Trusts.**

Trustee intended to modify the trust in order to qualify a beneficiary for public benefits; because impoverishing the beneficiary in order to qualify her would make the trust provisions void, the modified provisions would have been void on grounds of public policy, and the trial court's denial of the modification motion was that the purpose for modifying the trust would be defeated. In re Ruby G. Owen Trust, 2012 Ark. App. 381, — S.W.3d — (2012).

Trial court considered case law from other jurisdictions that permitted the modification the trustee requested in this case, in order to qualify a beneficiary for public benefits, but the trial court did not find that the modification was permissible under public policy and Arkansas law; the court was not left with a firm conviction that a mistake was committed. In re Ruby G. Owen Trust, 2012 Ark. App. 381, — S.W.3d — (2012).

SUBCHAPTER 4 — PRESCRIPTION DRUGS

Acts 2012, No. 250, § 11, provided: "MEDICAL SERVICES — GENERAL MEDICAID RATE METHODOLOGY PROVISIONS.

"(a) Rates established by the Division of Medical Services for the services or programs covered by this Act shall be calculated by the methodologies approved by the Centers for Medicare and Medicaid Services (CMS). The Division of Medical Services shall have the authority to reduce or increase rates based on the approved methodology. Further, the Division of Medical Services shall have the authority to increase or decrease rates for good cause including, but not limited to:

"(1) Identification of provider(s) who can render needed services of equal quality at rates less than traditionally charged and who meet the applicable federal and state laws, rules and regulations pertaining to the provision of a particular service;

"(2) Identification that a provider or group of providers has consistently charged rates to the Arkansas Medicaid Program greater than to other purchasers of medical services of similar size;

"(3) The Division determines that there has been significant changes in the technology or process by which services are provided by a provider or group of providers which has affected the costs of providing services, or;

"(4) A severe economic downturn in the Arkansas economy which has affected the overall state budget of the Division of Medical Services.

"The Division of Medical Services shall make available to requesting providers, the CMS's inflationary forecasts (CMS Market Basket Index). Rates established with cost of living increases based on the CMS Market Basket Index or other indices will be adjusted annually except when the state budget does not provide sufficient appropriation and funding to affect the change or portion thereof.

"(b) Any rate methodology changes proposed by the Division of Medical Services both of a general and specific nature, shall be subject to prior review by the Legislative Council or Joint Budget Committee.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

20-77-403. Fees paid to participating pharmacists.

A.C.R.C. Notes. Acts 2012, No. 250, § 10, provided: "MEDICAL SERVICES — PHARMACEUTICAL DISPENSING FEE SURVEY. No more than two years prior to making any changes to the current pharmaceutical dispensing fee, the State shall conduct an independent survey utilizing generally accepted accounting principles, to determine the cost of dispensing a prescription by pharmacists in Arkansas. Only factors relative to the cost of dispensing shall be surveyed. These factors shall not include actual acquisition costs or average profit or any combination of ac-

tual acquisition costs or average profit. The survey results shall be the basis for establishing the dispensing fee paid to participating pharmacies in the Medicaid prescription drug program in accordance with Federal requirements. The dispensing fee shall be no lower than the cost of dispensing as determined by the survey. Nothing in this section shall be construed to prohibit the State from increasing the dispensing fee at any time.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 78**CHILD CARE****SUBCHAPTER 1 — GENERAL PROVISIONS****20-78-104. Child Health and Family Life Institute.**

A.C.R.C. Notes. Acts 2012, No. 250, § 9, provided: "MEDICAL SERVICES — CHILD AND FAMILY LIFE INSTITUTE. The Child Health and Family Life Institute shall be administered under the direction of Arkansas Children's Hospital. Arkansas Children's Hospital shall enter into a cooperative agreement and/or contract with the University of Arkansas for Medical Sciences — Department of Pediatrics for services required in delivering the programs of the Child Health and Family Life Institute. Utilizing a multidisciplinary collaboration of professionals, the Child Health and Family Life Institute shall provide a statewide effort to explore, develop and evaluate new and better ways to address medically, socially and economically interrelated health and developmental needs of children with special health care needs and their families. The Child Health and Family Life Institute's priorities shall include, but are not limited to, wellness and prevention, screen and diagnosis, treatment and intervention, training and education and research and evaluation.

"Arkansas Children's Hospital and the University of Arkansas for Medical Sciences — Department of Pediatrics shall make annual reports to the Arkansas Leg-

islative Council on all matters of funding, existing programs and services offered through the Child Health and Family Life Institute.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 257, § 39, provided: "CHILD AND FAMILY LIFE INSTITUTE. The Child Health and Family Life Institute shall be administered under the direction of Arkansas Children's Hospital. Arkansas Children's Hospital shall enter into a cooperative agreement and/or contract with the University of Arkansas for Medical Sciences-Department of Pediatrics for services required to deliver the programs of the Child Health and Family Life Institute (CHFLI). Utilizing a multidisciplinary collaboration of professionals, CHFLI shall provide a statewide effort to explore, develop and evaluate new and better ways to address medically, socially and economically interrelated health and developmental needs of children with special health care needs and their families. CHFLI priorities shall include, but are not limited to, wellness and prevention, screen and diagnosis, treatment and intervention, training and education and research and evaluation. Arkansas Chil-

dren's Hospital and the University of Arkansas for Medical Sciences-Department of Pediatrics shall make annual reports to the Arkansas Legislative Council on all matters of funding, existing programs and

services offered through CHFLI.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 81

VETERANS' AFFAIRS

20-81-102. Department of Veterans' Affairs — Creation — Powers and duties.

A.C.R.C. Notes. Acts 2012, No. 99, § 12, provided: "LIABILITY INSURANCE APPROPRIATION RESTRICTION. In no event shall the Department of Veterans' Affairs expend or transfer any appropriation or funds for the purchase of

malpractice liability insurance for the benefit of a non-governmental entity.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

TITLE 21

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 5

COMPENSATION AND BENEFITS

SUBCHAPTER 1 — GENERAL PROVISIONS

A.C.R.C. Notes. Acts 2012, No. 135, § 5, provided: "SALARIES. In order that exceptionally well-qualified personnel may be recruited and retained, the Office of the Governor may exceed the maximum salary levels by no more than twenty

percent (20%) for no more than one-third ($\frac{1}{3}$) of the positions authorized in the operation appropriation act after receiving approval from the Arkansas Legislative Council or Joint Budget Committee."

SUBCHAPTER 2 — UNIFORM CLASSIFICATION AND COMPENSATION ACT

21-5-221. Compensation differentials.

A.C.R.C. Notes. Acts 2012, No. 257, § 43, provided: "ON-CALL COMPENSATION. On-call duty or standby duty differential may be authorized for a Classified or Non-Classified patient care employee whose job requires him or her to provide services when there is no regularly scheduled staff coverage. An employee shall not exceed 128 hours during

any seven-day period, at rates of pay not to exceed those provided in the Uniform Classification and Compensation Act, or its successor, or this act for the appropriate compensation.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 8
ETHICS AND CONFLICTS OF INTEREST

A.C.R.C. Notes. Acts 2012, No. 264, § 7, provided: “ADVERTISING. No advertising targeting the prevention or reduction of tobacco use shall include the name, voice, or likeness of any elected official or

their immediate family.
“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 9
LIABILITY OF STATE AND LOCAL GOVERNMENTS

SUBCHAPTER 3 — LIABILITY OF POLITICAL SUBDIVISIONS

21-9-301. Tort liability — Immunity declared.

CASE NOTES

ANALYSIS

Constitutionality.
In General.
Applicability.
Intentional Torts.

Constitutionality.
In an action filed against a school district and a bus driver after the rape of a student, the provision of limited immunity under this section did not violate Ark. Const. art. 2, § 13, and an appellate court was unable to overturn caselaw to the extent that it shielded a school district from accountability under the Arkansas Public Education Act, §§ 6-15-1001 to 1007, because judicial precedent from the Arkansas Supreme Court had to be followed. *Young v. Blytheville Sch. Dist.*, 2013 Ark. App. 50, — S.W.3d —, 2013 Ark. App. LEXIS 68 (Jan. 30, 2013).

In General.
Arkansas Legislature did not intend to partially repeal this section when it enacted the Arkansas Public Education Act, §§ 6-15-1001 to 1007. *Young v. Blytheville Sch. Dist.*, 2013 Ark. App. 50, — S.W.3d

—, 2013 Ark. App. LEXIS 68 (Jan. 30, 2013).

Applicability.
Trial court erred in denying a city’s motion for summary judgment in an action by property owners for damage to their property because at no point did the complaint mention breach of a contract; because the city put forth proof that it did not have insurance coverage for the claim alleged, it was entitled to immunity under subsection (a) of this section as to the tort cause of action. *City of Malvern v. Jenkins*, 2013 Ark. 24, — S.W.3d —, 2013 Ark. LEXIS 31 (Jan. 31, 2013).

Intentional Torts.
In an action against a school district and a bus driver arising from a student’s rape, although the student was a victim of intentional torts when she was pulled into a bathroom and raped, there was no facts indicating that the school district or the bus driver committed those acts or any other intentional torts. Therefore, immunity was provided under this section. *Young v. Blytheville Sch. Dist.*, 2013 Ark. App. 50, — S.W.3d —, 2013 Ark. App. LEXIS 68 (Jan. 30, 2013).

TITLE 22

PUBLIC PROPERTY

CHAPTER 2

ARKANSAS BUILDING AUTHORITY

22-2-108. Powers and duties generally.

A.C.R.C. Notes. Act 2012, No. 102, § 17, provided: “RESTRICTIONS. Arkansas Building Authority shall not demolish the 501 Building, formerly known as the Aegon building, but shall retain the building as suitable office space to be used by

state agencies, boards, commissions, offices and departments.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

22-2-114. Leasing responsibilities.

A.C.R.C. Notes. Acts 2012, No. 126, § 3, provided: “LEASING FROM ARKANSAS BUILDING AUTHORITY. The Board of Hearing Instrument Dispensers shall be exempt from Arkansas Building Authority leasing jurisdiction and proce-

dures as set out in Arkansas Code 22-2-114.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 3

PUBLIC BUILDINGS AND OTHER FACILITIES

SUBCHAPTER 3 — CAPITOL ZONING DISTRICT

22-3-306. Authority of Capitol Zoning District Commission over property within Capitol Zoning District — Permits.

CASE NOTES

Fences.

There was substantial evidence to support the Capitol Zoning District Commission’s decision denying a property owner’s application to install a 48-inch-high fence. The owner’s property was one of the most

historic residences in all of Arkansas, and surrounding properties traditionally had fences at or under 40 inches in height. Capitol Zoning Dist. Comm’n v. Cowan, 2012 Ark. App. 619, — S.W.3d —, 2012 Ark. App. LEXIS 732 (Oct. 31, 2012).

SUBCHAPTER 10 — WAR MEMORIAL STADIUM

A.C.R.C. Notes. Acts 2012, No. 174, § 5, provided: “APPROPRIATION RESTRICTIONS — LAND ACQUISITION. In no event shall any funds appropriated to the War Memorial Stadium Commission be used for the acquisition of real

estate without the prior review and approval of the Arkansas Legislative Council or Joint Budget Committee.

“Determining the maximum number of employees and the maximum amount of appropriation and general revenue fund-

ing for a state agency each fiscal year is the function of the General Assembly. This is usually accomplished by delineating such maximums as the appropriation in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by

this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, then the authority of the Commission to acquire real estate is void.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 8

MOTOR VEHICLES

SUBCHAPTER 2 — AUTOMOBILE AND PICKUP TRUCK ACQUISITION

22-8-206. Purchase of automobiles.

A.C.R.C. Notes. Acts 2012, No. 284, § 16, provided: “MOTOR VEHICLE ACQUISITION REVOLVING FUND — MOTOR VEHICLE PURCHASES/RENOVATION. At least fifty percent (50%) of the general revenues and/or general improvement funds deposited into the Motor Ve-

hicle Acquisition Revolving Fund shall be used for motor vehicle purchases and/or motor vehicle renovation costs for the Department of Arkansas State Police.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

TITLE 23

PUBLIC UTILITIES AND REGULATED INDUSTRIES

SUBTITLE 4. MISCELLANEOUS REGULATED INDUSTRIES

CHAPTER.

115. ARKANSAS SCHOLARSHIP LOTTERY ACT.

SUBTITLE 1. PUBLIC UTILITIES AND CARRIERS**CHAPTER 2****REGULATORY COMMISSIONS****SUBCHAPTER 4 — PROCEDURE BEFORE COMMISSIONS****23-2-420. Orders, findings, rules, certificates, etc., under Acts 1935, No. 324, to be in writing — Copies as evidence.****CASE NOTES****Public Service Commission**

Arkansas Public Service Commission's orders are matters of public record under this section. Courts take judicial notice of public records that are required to be

kept. Consequently, courts may take judicial notice of orders rendered by the Commission. *Falcon Cable Media LP v. Ark. PSC*, 2012 Ark. 463, — S.W.3d —, 2012 Ark. LEXIS 501 (Dec. 13, 2012).

23-2-421. Findings and orders of Arkansas Public Service Commission.**CASE NOTES****Findings of Fact.**

Arkansas Public Service Commission complied with subsection (a) of this section when it gave a considered response that informed the parties of the basis for the order and indicated the reasoning by which the Commission reached its decision; the issue in the case was whether

customers were overbilled for electricity usage, and whether the customers requested that the permanent service be activated was not directly relevant to whether they were overbilled for that service. *Pressler v. Ark. PSC*, 2011 Ark. App. 512, — S.W.3d — (2011).

23-2-423. Arkansas Public Service Commission orders — Judicial review — Procedure.**CASE NOTES****ANALYSIS**

In General.

Constitutional Rights.

Scope of Review.

In General.

Fact that customers were proceeding pro se before the Arkansas Public Service Commission did not warrant them special treatment because pro se parties were held to the same standard as a licensed attorney. *Pressler v. Ark. PSC*, 2011 Ark. App. 512, — S.W.3d — (2011).

Constitutional Rights.

Customers were afforded due process because they had the opportunity to subpoena witnesses but failed to do so; the Arkansas Public Service Commission's Rules of Practice and Procedure provide that parties before the Commission may request subpoenas from the Commission to secure the testimony of witnesses, but those rules do not specify a time in which subpoenas are required to be served. *Pressler v. Ark. PSC*, 2011 Ark. App. 512, — S.W.3d — (2011).

Scope of Review.

Because a university did not file a petition for rehearing from an administrative law judge’s order, it could not argue on appeal that the order erroneously held that facilities agreements the university entered into with an energy company were void and unenforceable in their entirety. *Entergy Ark., Inc. v. Ark. PSC*, 2011 Ark. App. 453, — S.W.3d — (2011).

Arkansas Public Service Commission (PSC) did not err in dismissing customer’s complaint alleging that an energy company overcharged them for electric service

because there was testimony that the meter on the customers’ house was working properly and that the appliances installed in the home could have used the amount of electricity billed under the weather conditions during the time period in question; the administrative law judge specifically credited the testimony a member of the PSC staff that there was no evidence that the company overbilled the customers or that it violated any of the PCS’s rules. *Pressler v. Ark. PSC*, 2011 Ark. App. 512, — S.W.3d — (2011).

CHAPTER 3
REGULATION OF UTILITIES AND CARRIERS
GENERALLY

SUBCHAPTER 4 — ENERGY CONSERVATION ENDORSEMENT ACT OF 1977

23-3-405. Authority of Arkansas Public Service Commission — Rates and charges.

CASE NOTES

Authority.

Arkansas Public Service Commission had authority to approve a general policy to award incentives to utilities for their achievement in delivering essential energy-conservation services, because under subsection (b) of this section, the “cost”

provision was not intended as a limitation on the Commission’s ability to pursue other means of promoting energy efficiency. *Ark. Elec. Energy Consumers, Inc. v. Ark. PSC*, 2012 Ark. App. 264, — S.W.3d — (2012).

CHAPTER 17
TELEPHONE AND TELEGRAPH COMPANIES

SUBCHAPTER 4 — TELECOMMUNICATIONS REGULATORY REFORM

23-17-404. Preservation and promotion of universal service.

A.C.R.C. Notes. Acts 2012, No. 191, § 14, provided: “ARKANSAS HIGH COST FUND. To ensure that telecommunications rates are reasonable and affordable, the Arkansas Public Service Commission should take all reasonable steps necessary to reduce the Arkansas High

Cost Fund (AHCF), and avoid mandating any additional charges or expenses for telecommunications services that could increase AHCF assessments which would result in higher AHCF surcharges to customers.”

SUBTITLE 3. INSURANCE**CHAPTER 79****INSURANCE POLICIES GENERALLY****SUBCHAPTER 1 — GENERAL PROVISIONS****23-79-125. Payment by insurer — Discharge.****CASE NOTES****Discharge.**

Pursuant to this section, where none of the interpleaded bank defendants had given written notice to an insurer that they intended to claim any interest in policy proceeds after insureds' home and personal property were destroyed by fire,

the insurer could have availed itself of the statutory protection rather than filing an interpleader action that did nothing but delay payment of the proceeds of the policy. *Farm Bureau Mut. Ins. Co. of Ark., Inc. v. Guyer*, 2011 Ark. App. 710, — S.W.3d — (2011).

SUBCHAPTER 2 — SUITS AGAINST INSURERS**23-79-202. Limitation of actions.****CASE NOTES****ANALYSIS****Construction.****Applicability.****Construction.**

This section's reference to "period prescribed by law for bringing actions on promises in writing" does not incorporate the judicial rule of law that generally permits insurers to shorten the period for bringing actions under insurance policies to a reasonable time. *Graham v. Hartford Life & Accident Ins. Co.*, 677 F.3d 801 (8th Cir. 2012).

Applicability.

Insured's breach of contract suit, which was brought outside an accidental death and dismemberment policy's three-year time limit, was timely; this section precluded the insurer from contractually shortening the limitations period to less than the five-year period for breach of contract actions under § 16-56-111(a). *Graham v. Hartford Life & Accident Ins. Co.*, 677 F.3d 801 (8th Cir. 2012).

23-79-208. Damages and attorney's fees on loss claims.**CASE NOTES****Insurer's Liability.**

Pursuant to subdivision (a)(1) of this section, an insurer's filing of an interpleader complaint was unreasonable where none of the named defendants had any claim to the proceeds of the insurance policy that the insureds had filed a claim for, based on a fire that destroyed their

home and personal property; a second mortgage was immaterial where the terms of the policy between the insureds and the insurer did not name the second mortgagee as a loss payee. *Farm Bureau Mut. Ins. Co. of Ark., Inc. v. Guyer*, 2011 Ark. App. 710, — S.W.3d — (2011).

Pursuant to subdivision (a)(1) of this

section, an insurer’s filing of an interpleader complaint was unreasonable where none of the named defendants had any claim to the proceeds of the insurance policy that the insureds had filed a claim for, based on a fire that destroyed their

home and personal property; judgment creditors’ liens did not apply to the insurance proceeds. *Farm Bureau Mut. Ins. Co. of Ark., Inc. v. Guyer*, 2011 Ark. App. 710, — S.W.3d — (2011).

23-79-210. Direct cause of action against liability insurer when insured not subject to tort suit.

CASE NOTES

ANALYSIS

Damages.
Direct Actions.
Rights of Parties.

Damages.
In a direct action that was brought against a liability insurer after a surgeon operated on the wrong side of the patient’s brain, the circuit court did not err in reducing the jury’s verdict from \$20 million to \$11 million. Subdivision (a)(3) of this section limited liability to the extent of coverage in the policy. *Proassurance Indem. Co. v. Metheny*, 2012 Ark. 461, — S.W.3d —, 2012 Ark. LEXIS 499 (Dec. 13, 2012).

Direct Actions.
Ark. R. Civ. P. 15(c) did not apply and the estate administrator’s claims were barred by the statute of limitations, because the administrator’s error in failing to name the insurer in the original complaint was purely due to a misunderstanding

of this section, the direct-action statute, and not because she did not have the identity of the insurance company. *Glass v. Saline County Med. Ctr.*, 2012 Ark. App. 525, — S.W.3d — (2012).

Rights of Parties.
Where plaintiff insurer sought to deposit its policy limits into the court, and defendants, the known claimants of an accident caused by the insured’s driver’s negligence, asserted counterclaims under this section, alleging the limits included additional sums, under the UIM endorsement’s “Coverage” section, “underinsured motor vehicle” included a vehicle with liability coverage provided in the same policy as the UIM endorsement, and the UIM coverage was explicitly additional to any liability coverage, including the insurer’s, thus, the claimants could aggregate liability and UIM coverage. *Argonaut Great Cent. INS. Co. v. Casey*, 701 F.3d 829, 2012 U.S. App. LEXIS 23280 (8th Cir. Nov. 13, 2012).

CHAPTER 88
PROPERTY INSURANCE

SUBCHAPTER 1 — GENERAL PROVISIONS

23-88-101. Valued policy law.

RESEARCH REFERENCES

ALR. Applicability of Valued-Policy Statutes to Flood, Wind, and Hurricane Damage. 62 A.L.R.6th 227.

CHAPTER 89

CASUALTY INSURANCE

SUBCHAPTER 2 — AUTOMOBILE LIABILITY INSURANCE GENERALLY

23-89-202. Required first party coverage.

CASE NOTES

Benefits.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation

benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under § 23-89-205. *Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, — S.W.3d — (2012).

23-89-203. Rejection of coverage.

CASE NOTES

In General.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation

benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under § 23-89-205. *Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, — S.W.3d — (2012).

23-89-205. Exclusion of benefits.

CASE NOTES

Workers' Compensation.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation

benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under this section. *Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, — S.W.3d — (2012).

23-89-207. Insurer's right of reimbursement.

CASE NOTES

Right to Subrogation.

Trial court erred in dismissing the insurer's declaratory judgment count, having erred in determining the insurer had a valid lien under this section, that arose at

the time the insurer made medical payment to the insured. The subrogation lien could not arise or attach until the insured received the settlement proceeds and there was a judicial determination that

she had been made whole. *Riley v. State Farm Mut. Auto. Ins. Co.*, 2011 Ark. 256, — S.W.3d — (2011).

23-89-208. Payments.

CASE NOTES

Workers' Compensation.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation

benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under § 23-89-205. *Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, — S.W.3d — (2012).

CHAPTER 99

HEALTH CARE PROVIDERS

SUBCHAPTER 4 — ARKANSAS HEALTH CARE CONSUMER ACT

23-99-418. Coverage for autism spectrum disorders required — Definitions. [Effective October 1, 2011.]

A.C.R.C. Notes. Acts 2012, No. 219, § 17, provided: "AUTISM TREATMENT AND COORDINATION. The Department of Human Services — Division of Developmental Disabilities Services shall promulgate rules and regulations regarding the licensure and oversight of Applied Behavior Analysts as described in Arkan-

sas Code § 23-99-418. The rules and regulations shall include a requirement for a licensure application fee equal to that charged to applicants to be licensed as a psychologist as described in Arkansas Code § 17-97-309. Proceeds from this fee are declared as cash funds."

CHAPTER 103

TITLE INSURANCE

SUBCHAPTER 4 — ARKANSAS TITLE INSURANCE ACT

23-103-405. Title insurers — Limitation of authority — Powers.

CASE NOTES

Negligence.

Bank stated a claim of negligence because of the title company's duty allegedly created by this section to underwrite an Insured Closing Protection Letter which provided coverage for theft and misappro-

priation and the alleged breach of that duty which caused the bank damage. However, the bank's general claim of negligence set forth in was dismissed as it was simply a recitation of the legal elements of negligence. *U.S. Bank N.A. ND v.*

Elender Escrow, Inc., — F. Supp. 2d —,
2011 U.S. Dist. LEXIS 134690 (E.D. Ark.
Nov. 21, 2011).

SUBTITLE 4. MISCELLANEOUS REGULATED INDUSTRIES

CHAPTER 110

ARKANSAS HORSE RACING LAW

SUBCHAPTER 1 — GENERAL PROVISIONS

23-110-105. Racing passes.

A.C.R.C. Notes. Acts 2012, No. 30, § 6, provided: “RACING PASS RESTRICTIONS. The Director of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually and it shall

not be less than the number printed in 1990.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 111

ARKANSAS GREYHOUND RACING LAW

SUBCHAPTER 1 — GENERAL PROVISIONS

23-111-105. Racing passes.

A.C.R.C. Notes. Acts 2012, No. 30, § 6, provided: “RACING PASS RESTRICTIONS. The Director of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually and it shall

not be less than the number printed in 1990.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

SUBCHAPTER 5 — CONDUCT OF MEETS

23-111-505. Additional racing days for benefit of indigent patients, etc.

A.C.R.C. Notes. Acts 2012, No. 281, § 56, provided: “CREDIT TO THE INDIGENT PATIENTS FUND.

“(b) All revenue derived from the parimutuel tax at the fifteen (15) additional days of racing authorized by subsection (a) of Ark. Code 23-111-505 after monies have been remitted by the franchise holder to Mid-South Community College as may be provided by law, shall be deposited with the Treasurer of State as special revenue

for credit to the Indigent Patients Fund, to be used to defray the cost of hospitalization and other medical services of indigent Arkansas patients in health care facilities by Mississippi County, Poinsett County, Cross County, St. Francis County and Lee County for which the county has not received total reimbursement. Each county shall certify to the Chief Fiscal Officer of the State the amount of the unreimbursed medical expenses under such procedures

and such detail as required by the Department of Finance and Administration. The amount available to each county shall be no more than one-fifth ($\frac{1}{5}$) of the total

funds available or the amount certified of unreimbursed medical expenses, whichever is less."

CHAPTER 112

ARKANSAS MOTOR VEHICLE COMMISSION ACT

SUBCHAPTER 2 — ARKANSAS MOTOR VEHICLE COMMISSION

23-112-205. Disposition of funds.

A.C.R.C. Notes. Acts 2012, No. 169, § 3, provided: "CONSUMER PROTECTION. Protecting the consumer is a critical purpose of the Arkansas Motor Vehicle Commission. Therefore, of the total amount appropriated under Section 2 of this Act for the operating expenses of the Arkansas Motor Vehicle Commission, seventeen thousand five hundred dollars (\$17,500) each fiscal year shall be allocated to consumer protection efforts. The

Arkansas Motor Vehicle Commission will submit quarterly a written report to Arkansas Legislative Council on their Consumer Protection efforts.

"The Arkansas Motor Vehicle Commission will continue to develop additional programs and procedures that will expand consumer protection efforts.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

23-112-206. Fund transfer — Motor vehicle education and training.

A.C.R.C. Notes. Acts 2012, No. 169, § 4, provided: "FUND TRANSFER — MOTOR VEHICLE EDUCATION AND TRAINING. For the fiscal year ending June 30, 2008, and for each fiscal year thereafter, the Director of the Arkansas Motor Vehicle Commission may, from time to time as needed, certify to the Chief Fiscal Officer of the State the amount of funds necessary to transfer on his or her books and those of the State Treasurer and the Auditor of State, from the Motor

Vehicle Commission Fund to the Department of Workforce Education Fund Account, to provide funds for expenses related to motor vehicle education and training. Fund transfer will be completed following quarterly review of program expenditures, including a review of the availability of program funding. In no event shall the amount of funds transferred under the provisions of this section exceed one hundred fifty thousand dollars (\$150,000) in any one fiscal year."

SUBCHAPTER 4 — UNLAWFUL PRACTICES

23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters.

CASE NOTES

Termination.

Because the Arkansas Motor Vehicle Commission failed in its obligation to make sufficient findings of fact relevant to

the contested issue of what constituted the current model year, the supreme court could not determine whether the Commission had resolved that issue in conformity

with the law. Voltage Vehicles v. Ark. Motor Vehicle Comm'n, 2012 Ark. 386, — S.W.3d — (2012).

CHAPTER 114

CHARITABLE BINGO AND RAFFLES

SUBCHAPTER 6 — EXCISE TAX

23-114-601. Tax levied.

Publisher's Notes. This note is being set out to correct an error in the 2009 supplement.

CHAPTER 115

ARKANSAS SCHOLARSHIP LOTTERY ACT

SUBCHAPTER.

11. ARKANSAS LOTTERY COMMISSION LEGISLATIVE OVERSIGHT COMMITTEE.

SUBCHAPTER 11 — ARKANSAS LOTTERY COMMISSION LEGISLATIVE OVERSIGHT COMMITTEE

SECTION.

23-115-1102. Filing of information with
Arkansas Lottery Com-

mission Legislative Oversight Committee.

23-115-1102. Filing of information with Arkansas Lottery Commission Legislative Oversight Committee.

(a) It is the intent of the General Assembly that the Arkansas Lottery Commission Legislative Oversight Committee perform the monitoring and oversight functions of the Legislative Council for the Arkansas Lottery Commission.

(b) All contracts, rules, reports, or other information required by law to be filed by the commission with the Legislative Council:

(1) Shall not be filed with the Legislative Council; and

(2) Shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee.

(c)(1) The Arkansas Lottery Commission Legislative Oversight Committee shall perform all duties or functions of the Legislative Council required by law concerning the contracts, rules, reports, or other information filed with the Arkansas Lottery Commission Legislative Oversight Committee under subsection (b) of this section.

(2) The Bureau of Legislative Research shall provide staff for the Arkansas Lottery Commission Legislative Oversight Committee.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 36; 2010, No. 294, § 36.

Publisher's Notes. This section is being set out to reflect a correction in the 2011 supplement.

Amendments. The 2010 amendment by identical acts Nos. 265 and 294 added (c)(2).

TITLE 24

RETIREMENT AND PENSIONS

CHAPTER 2

PUBLIC EMPLOYEE RETIREMENT PLANS

GENERALLY

SUBCHAPTER 7 — ARKANSAS PUBLIC EMPLOYEE RETIREMENT PLANS

24-2-703. Tax exemptions.

CASE NOTES

ANALYSIS

Shopping Center Owned by Arkansas Teacher Retirement.
—System Not Exempt from Ad Valorem Taxation.

Shopping Center Owned by Arkansas Teacher Retirement.
—System Not Exempt from Ad Valorem Taxation.

Shopping center owned by the Arkansas Teacher Retirement System was not ex-

empt from ad valorem taxation, under Ark. Const. Art. 16, § 5(b), despite this section and § 24-7-204, purportedly exempting the property, because (1) the statutes had to yield to the Arkansas Constitution, under which public property was only exempt if the property was used exclusively for a public purpose, and (2) it was undisputed that the property was leased to private businesses. Ark. Teacher Ret. Sys. v. Short, 2011 Ark. 263, 381 S.W.3d 834 (2011).

CHAPTER 7

RETIREMENT OF EMPLOYEES OF SCHOOLS AND

EDUCATIONAL INSTITUTIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

24-7-103. Payment of employer contribution rate.

A.C.R.C. Notes. Acts 2012, No. 269, § 20, provided: “RETIREMENT MATCHING. Beginning with the 1996-97 school year, Local School Districts shall pay the teacher retirement employer contribution rate for any eligible employee in accordance with rules and regulations estab-

lished by the Teacher Retirement Board of Directors. The appropriation contained herein for Teacher Retirement Matching each fiscal year shall be used to provide the employer matching for employees of the Cooperative Education Services Areas, Vocational Centers, Arkansas Easter

Seals and the school operated by the Department of Correction.

in effect only from July 1, 2012 through June 30, 2013.”

“The provisions of this section shall be

SUBCHAPTER 2 — ARKANSAS TEACHER RETIREMENT SYSTEM — GENERAL PROVISIONS

24-7-204. Tax status of system assets.

CASE NOTES

ANALYSIS

Shopping Center Owned by Arkansas Teacher Retirement.

—System Not Exempt from Ad Valorem Taxation.

Shopping Center Owned by Arkansas Teacher Retirement.

—System Not Exempt from Ad Valorem Taxation.

Shopping center owned by the Arkansas Teacher Retirement System was not ex-

empt from ad valorem taxation, under Ark. Const. Art. 16, § 5(b), despite § 24-2-703 and this section, purportedly exempting the property, because (1) the statutes had to yield to the Arkansas Constitution, under which public property was only exempt if the property was used exclusively for a public purpose, and (2) it was undisputed that the property was leased to private businesses. Ark. Teacher Ret. Sys. v. Short, 2011 Ark. 263, 381 S.W.3d 834 (2011).

SUBCHAPTER 4 — ARKANSAS TEACHER RETIREMENT SYSTEM — FUNDS AND MANAGEMENT OF ASSETS

24-7-403. Restrictions on use of assets.

CASE NOTES

ANALYSIS

Shopping Center Owned by Arkansas Teacher Retirement.

—System Not Exempt from Taxation.

Shopping Center Owned by Arkansas Teacher Retirement.

—System Not Exempt from Taxation.

Shopping center owned by the Arkansas Teacher Retirement System (ATRS) was not exempt from ad valorem taxation,

under Ark. Const. Art. 16, § 5(b), because, (1) to be exempt, public property had to be used exclusively for a public purpose, (2) it was undisputed that the property was leased to private businesses, and (3) the fact that income from the property was used to fulfill the function of the ATRS, mandated in subsection (a) of this section, to provide benefits, did not show the property was used exclusively for a public purpose. Ark. Teacher Ret. Sys. v. Short, 2011 Ark. 263, 381 S.W.3d 834 (2011).

CHAPTER 11

LOCAL POLICE AND FIRE PENSION AND RELIEF FUNDS

SUBCHAPTER 1 — GENERAL PROVISIONS

24-11-102. Increase in benefits.

CASE NOTES

Increase in Benefits.

This section authorized a board of trustees of a policemen’s pension to increase monthly benefits to current retirees by a fixed dollar amount, and the increases for the current retirees did not violate equal

protection, Ark. Const. Art. 2, § 3, because there was a rational basis for imposing them, a lack of cost of living increases. *Bakalekos v. Furlow*, 2011 Ark. 505, 385 S.W.3d 810 (2011).

SUBCHAPTER 2 — DISCLOSURE OF FINANCIAL CONDITION — ARKANSAS FIRE AND POLICE PENSION REVIEW BOARD

24-11-203. Arkansas Fire and Police Pension Review Board.

A.C.R.C. Notes. Acts 2012, No. 281, § 62, provided: “FUNDING TRANSFER — FIRE AND POLICE PENSION. On or before June 15 of each fiscal year, the Arkansas Fire and Police Pension Review Board shall certify to the Chief Fiscal Officer of the State the amount of funding it recommends for disbursement in the ensuing fiscal year to under-funded municipal fire and police relief and pension plans as defined in Arkansas Code 24-11-209. The Chief Fiscal Officer of the State shall then immediately transfer on his

books and those of the State Treasurer amounts not to exceed the total amount recommended by the Board or the amount appropriated herein for the ensuing fiscal year, whichever is the lesser amount, from the Revenue Holding Fund Account to the Arkansas Fire and Police Pension Guarantee Fund for distribution to the recommended under-funded plans.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

TITLE 25

STATE GOVERNMENT

CHAPTER.

- 19. FREEDOM OF INFORMATION ACT OF 1967.
- 42. HEALTH INFORMATION TECHNOLOGY.

CHAPTER 3

DEPARTMENT OF ARKANSAS HERITAGE

25-3-106. Publication Development and Resale Revolving Fund.

A.C.R.C. Notes. Acts 2012, No. 233, § 33, provided: "PUBLICATION DEVELOPMENT AND RESALE. The Department of Arkansas Heritage is hereby authorized to make fund transfers from the Natural & Cultural Resources Historic Preservation Fund or other funds established from federal or non-federal grants to the Publication Development and Resale Revolving Fund to use to develop and

purchase additional publications for resale after seeking prior review by the Arkansas Legislative Council. In no case shall the fund transfers exceed twenty-five thousand dollars (\$25,000) in any fiscal year.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 4

DEPARTMENT OF INFORMATION SYSTEMS

25-4-105. Department of Information Systems — General powers and duties.

A.C.R.C. Notes. Acts 2012, No. 281, § 76, provided: "INNOVATION AND PROJECT DEVELOPMENT FUND TRANSFERS. The Department of Information Systems is a cost recovery agency subject to the requirements of the United States Office of Management and Budget Circular A-87 Cost Principles for State, Local and Indian Tribal Government (A-87) and Cost Principles for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government Implementation Guide for the Office of Management and Budget Circular A-87 (ASMBC-10). To comply with these federal rules, it is necessary to establish an Innovation and Project Development appropriation and general rev-

enue fund account within the Department of Finance and Administration Disbursing Officer for the Department of Information Systems. This fund shall be used for state enterprise innovation projects that would enhance the technology operations of the State that cannot be cost allocated to federal programs. The Department of Information Systems will maintain documentation for projects billed for these purposes. Fund transfers may be made from the General Revenue Fund Account, upon the approval of the Chief Fiscal Officer of the State and prior review of the Arkansas Legislative Council or Joint Budget Committee, to reimburse the Department of Information Systems for the amounts billed."

25-4-106. Reporting requirements.

A.C.R.C. Notes. Acts 2012, No. 165 § 8, provided: "REPORTING REQUIREMENTS.

"(a)(1) The Director of the Department of Information Systems will report periodically to the Joint Committee on Advanced Communications and Information Technology and the Executive Chief Information Officer regarding the status of the Department of Information Systems' in-

formation technology responsibilities in state government.

"(2) The director will forward to the joint committee any statutory changes that the department may recommend sufficiently in advance of the convening of the session of the General Assembly.

"(3) The director may report any factors that are outside the scope of the department but are deemed to inhibit or to

promote the department's responsibilities.

"(b)(1) By October 31, January 31, April 30, and July 31 of each fiscal year, the Director of the Department Information Systems shall compile and submit a report to:

"(A) The Arkansas Legislative Council, if submitted between regular sessions of the General Assembly;

"(B) The Joint Budget Committee, if submitted during a session of the General Assembly; and

"(C) The Joint Committee on Advanced Communications and Information Technology.

"(2) The report shall:

"(A) Detail all requests from state agencies, boards, and commissions for advice regarding information technology planning, implementation, installation, rates or fees, utilization of products, services, and integrations or upgrades to be added to all existing technology plans; and

"(B) Provide a full report of all corresponding recommendations made by the Department of Information Systems to

the requesting state agencies, boards, and commissions.

"(3) The report shall include:

"(A) The name of the state agency, board, or commission requesting the advice;

"(B) The name and scope of the project for which advice is being sought;

"(C) The type of advice sought, for example: technical, product or service utilization, planning, implementation, installation, integration, or upgrades;

"(D) A detailed explanation of all recommendations provided by the Department of Information Systems;

"(E) How the recommendation fits into the information technology plan of the agency, board, or commission;

"(F) How the recommendation fits into the state's information technology plan and shared technical architecture; and

"(G) Other information as may be useful for policy making decisions by the Legislative Council or Joint Committee on Advanced Communications and Information Technology."

CHAPTER 8

DEPARTMENT OF FINANCE AND ADMINISTRATION

25-8-102. Authority of director generally.

A.C.R.C. Notes. Acts 2012, No. 161 § 12, provided: "AUTHORITY TO EMPLOY CERTIFIED LAW ENFORCEMENT OFFICERS. The Director of the Department of Finance and Administration is authorized to employ not more than one (1) certified law enforcement officer as certified under § 12-9-101 et seq. The certified law enforcement officer employed

under this section shall be responsible for maintaining order and providing for the security, protection, and safety of Department buildings, grounds, property, employees and customers. The certified law enforcement officer shall have the powers, duties, privileges, and immunities of a certified law enforcement officer."

CHAPTER 9

DEPARTMENT OF HEALTH

25-9-103. Patient care providers — Wages — Required withholding — Fringe benefits.

A.C.R.C. Notes. Acts 2012, No. 280, § 32, provided: "PATIENT CARE PROVIDERS — COMPENSATION, REQUIRED WITHHOLDING, FRINGE BENEFITS. The Arkansas Department of

Health, at its discretion, is authorized to contract with intermittent Patient Care Providers in order to provide services in the home. The Department is authorized to pay compensation which may include

state withholding, federal withholding, required matching, and other fringe benefits to contract Patient Care Providers. However, compensation shall not include state retirement or health benefits. As funding allows, the Department shall make efforts to provide mileage reimbursement to a level comparable to rates authorized for its regular salaried employees. Beginning July 1, 2011, the Department will review the cost of increasing

mileage reimbursement by 10% to intermittent Patient Care Providers paid at a level less than regular salaried Department employees. All compensation to intermittent Patient Care Providers shall be made from the appropriation for Professional Fees and Services.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

25-9-105. Home health on-call and visit pay.

A.C.R.C. Notes. Acts 2012, No. 280, § 20, provided: "HOME HEALTH ON-CALL AND VISIT PAY. The Arkansas Department of Health is hereby authorized to compensate the following personnel responsible for providing in-home health care as necessary to maintain continuity of care outside routine working hours on weekdays and on weekends or holidays:

- "Area Nursing Director
- "Nursing Program Coordinator
- "Registered Nurse
- "Speech Pathologist
- "Physical Therapist
- "Licensed Social Worker
- "Occupational Therapist
- "Nurse Manager
- "Licensed Practical Nurse
- "Nursing Aide
- "Licensed Certified Social Worker

"Visit pay shall not exceed \$75 per visit. Employees requested to be on-call and/or on standby for visiting on nights, week-

ends, and/or holidays will be eligible to receive on-call pay not to exceed \$60 per day. Provided however, no compensation shall be paid to any employee required to be on-call and/or standby who fails to respond after the second notification that their services are needed. In the event of equipment or paging device malfunction, such penalty shall not apply. All compensated services shall be provided as directed by the Arkansas Department of Health. All visit and on-call pay shall be paid from funds as appropriated in this Act. Such compensation for visit and on-call pay, when added to the employee's regular salary and benefits, shall not be construed as exceeding the maximum annual salary as described in the General Accounting and Budgetary Procedures Act.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 10

DEPARTMENT OF HUMAN SERVICES

SUBCHAPTER 1 — GENERAL PROVISIONS

A.C.R.C. Notes. Acts 2012, No. 157, § 16, provided: "TRANSFER AUTHORITY. The Director of the Department of Human Services shall have transfer authority provided by the following:

"(a) DEPARTMENT OF HUMAN SERVICES RENOVATION FUND. The Director of the Department of Human Services is authorized to request fund transfers according to the provisions established by Arkansas Code Ann. 19-5-1020, Depart-

ment of Human Services Renovation Fund, as amended herein; and

"(b) MATCH TRANSFER. The Director of the Department of Human Services, with the approval of the Chief Fiscal Officer of the State, is authorized to effect inter-agency and inter-divisional fund transfers for the purpose of providing the State's matching share for payments made to that Division or Office or its service providers for services eligible for

federal reimbursement under programs administered by the Department of Human Services. The Department of Human Services shall report to the Legislative Council or Joint Budget Committee on a quarterly basis all fund transfers made in accordance with the authority granted by this section; and

“(c) **YOUTH SERVICES — HOUSING AND SEPARATION APPROPRIATION PROVISIONS.** The Division of Youth Services (DYS) is authorized to fulfill its responsibility to house offenders between the ages of 18 and 21 and to separate juvenile offenders by age and seriousness of offense by either employing additional state employees and providing the corresponding operating expenses or entering into professional services contracts. If the Division of Youth Services determines that the Division needs to employ state employees to fulfill the housing and separation requirements, they may transfer up to the total amount appropriated for the **DYS — Residential Services Program** appropriation to the appropriate **DYS** appropriation and line items, upon approval of the Chief Fiscal Officer of the State, and prior review by the Legislative Council; and

“(d) **REALLOCATION OF RESOURCES:** (1) The Department of Human Services (DHS) provides hundreds of different services to over 1 million Arkansans. The specific mix of service needs and the funding and staffing required to provide them can vary significantly based on many factors, including natural disasters, changing federal mandates and funding sources, demographic shifts, fluctuating court-ordered services, social trends, and job market variations such as nursing shortages. The impact of these factors through the course of any fiscal year make it very difficult for the Department to accurately predict the exact needs for funding, appropriation and positions in each of its over 100 different appropriations. To ensure that it can respond quickly to changing client needs and make the most effective use of the resources allocated to it, the Department of Human Services shall be authorized to utilize the reallocation of resource authority to make the proper adjustments to the budgets within the Department. Therefore, upon determination by the Director of the Department of Human Services that a real-

location of resources within the department is necessary for the efficient and effective operation of the department, the director, with approval of the Governor, shall have the authority to request, from the Chief Fiscal Officer of the State, a transfer of positions, appropriations, line item appropriations, and funds within or between existing and newly created divisions, offices, sections, or units of the department. Provided, however, that no transfer of funds or appropriation that provides direct support or matching support for the Arkansas Medicaid Program shall be made to any other fund account or appropriation that does not directly support the Arkansas Medicaid Program. Further, no positions, funds, or appropriation authorized during the budget process for the Division of Children and Family Services compliance with initiatives established under the Angela R. consent decree shall be transferred to any other division. Nothing in this provision is intended to prevent the one-time transfers of savings in any other program to the Arkansas Medicaid Program, with the exception of the provisions previously cited for the Division of Children and Family Services — Angela R. consent decree. The Division of Developmental Disabilities — Grants to Community Providers line item of the Developmental Disabilities Services — Grants-in-Aid appropriation may not be decreased. The appropriation, funding, and positions provided for the six Human Development Centers shall remain at a level sufficient to ensure quality care for the Centers’ residents. The exemptions provided in this subsection whereby certain DHS Programs and Divisions are protected from appropriation, fund, or position transfers are applicable only to the reallocation or transfer authority granted herein, and not by any reductions which are applicable to all state programs.

“The Director of the Department of Human Services shall submit any requests for transfers to and must receive approval of the requests for transfers from the Chief Fiscal Officer of the State, the Governor, and the Arkansas Legislative Council prior to the effective date of the transfers. Provided, however, that the Department of Human Services shall be limited to submitting no more than two reallocation of resources transfer requests during any fiscal year. In each Depart-

mental request no single division will request reallocation for more than one purpose as listed in this section. Transfer authority for unforeseen purposes shall further be limited to no more than 5% of the total appropriation, funding, and positions authorized for the Department. Reallocation of resources transfers may include multiple items but shall be limited to the following purposes:

“i). Medicaid Program

“ii). Facilities and institutions costs, including operational expenses and construction/renovation/equipping expenses

“iii). Departmental grants and contracts

“iv). Court ordered settlements and payments

“v). Payment of administrative expenses, including but not limited to, overtime and other costs of personnel for critical services or functions necessary to carry out the mission of the agency

“vi). Restructuring efforts as deemed necessary to comply with new and/or unanticipated federal or state mandates

“vii). Redirecting internal resources, both direct and/or indirect, to meet client needs and services

“Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Human Services may operate more efficiently if some flexibility is provided to the Department of Human Services authorizing broad powers under the Reallocation of Resources provisions herein. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(2) If it is determined that the requested reallocation of resources transfers should be made, the Chief Fiscal Officer of the State shall then initiate the necessary transfer documents to reflect the transfers upon the fiscal records of the Treasurer of State, the Auditor of State, the Chief Fiscal Officer of the State, and the Department of Human Services. In addition, the Chief Fiscal Officer of the State, together with the Co-Chairpersons of the Legislative Council or Joint Budget Committee, may approve, on an emergency basis, requests for utilization of this Section without prior approval of the Arkansas Legislative Council, with any such actions reported at the next meeting of the Arkansas Legislative Council.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 157, § 17, provided: “NURSING/DIRECT CARE EDUCATION STIPEND PROGRAM. Special provision for a Nursing/Direct Care Education Stipend Program for the Department of Human Services is hereby authorized to pay from State and Federal Funds appropriated in each division Act. This program is for eligible nursing students who are attending accredited nursing institutions to become Registered or Licensed Practical Nurses, as well as Certified Nursing Assistants, Residential Care Assistants, Residential Care Technicians, Residential Care Supervisors and Behavioral Health Aides.

“The stipend is \$5,000 per person per year. Any student who is awarded and accepts a stipend is under employment commitment to the respective DHS Division and is required to work for that division, in a full-time employee status effective immediately upon graduation. The student employment commitment is equal to the number of years the stipend was awarded and accepted. In the event of Employee/Student default of the employment commitment, the Employee/Student will be considered in breach of contract and repayment of the stipend will be required as specified in the Stipend Contract.

“Each division participating in the Education Stipend Program shall determine on an annual basis, the number of student stipends available.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 157, § 18, provided: "NURSING/DIRECT CARE RECRUITMENT/RETENTION BONUSES. Special provision to provide Nursing/Direct Care Recruitment and Retention Bonuses for the Department of Human Services is hereby authorized to pay from State and Federal funds appropriated for each respective division. Nursing/direct care service recruitment/retention bonuses are in addition to the maximum annual amounts provided in the Regular Salaries Section of the respective Division Act for Registered Nurse, Licensed Practical Nurse, Certified Nursing Assistant, Residential Care Assistant, Residential Care Technician, Residential Care Supervisor and Behavioral Health Aide. New hire nurses must be licensed by the Arkansas State Board of Nursing. The total recruitment/retention bonus payment commitment for eligible nurses shall not exceed \$4,000 per Registered Nurse and \$2,000 per Licensed Practical Nurse and \$1,000 per Certified Nursing Assistant, Residential Care Assistant, Residential Care Technician, Residential Care Supervisor and Behavioral Health Aide.

"The lump sum bonus payments and employment commitment to the State will be made in partial payments as follows:

"Registered Nurse Classifications

"\$1,000 after completing 6 months probationary employment

"\$1,500 after completing 1st year employment

"\$1,500 after completing 2nd year employment

"Licensed Practical Nurse Classifications

"\$ 500 after completing 6 months probationary employment

"\$ 500 after completing 1st year employment

"\$1,000 after completing 2nd year employment

"Certified Nursing Assistant/Residential Care Assistant/Residential Care Tech-

nician/Residential Care Supervisor/Behavioral Health Aide Classifications

"\$ 500 after completing 6 month probationary employment

"\$ 500 after completing 1st year employment

"Any qualified person hired and offered bonus payment described herein will forfeit the balance of the payments if he/she voluntarily resigns or is terminated for cause from employment from the Department of Human Services prior to completing the required employment commitment time periods outlined above.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 280, § 26, provided: "NURSING/DIRECT CARE EDUCATION STIPEND PROGRAM. Special provision for a Nursing/Direct Care Education Stipend Program for the Arkansas Department of Health (ADH) is hereby authorized to pay from funds appropriated in this Act. This program is for eligible nursing students who are attending accredited nursing institutions to become Registered or Licensed Practical Nurses.

"The stipend is five thousand dollars (\$5,000) per person per year. Any student who is awarded and accepts a stipend is under an employment commitment to the ADH and is required to work in a full-time employee status effective immediately upon graduation. The student employment commitment is equal to the number of years the stipend was awarded and accepted. In the event of Employee/Student default of the employment commitment, the Employee/Student will be considered in breach of contract and repayment of the stipend will be required as specified in the Stipend Contract.

"The ADH shall determine, on an annual basis, the number of student stipends available due to the availability of funds and the need for direct care services.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

25-10-134. Community-based residential programs — Regulations.

A.C.R.C. Notes. Acts 2012, No. 218, § 9, provided: "YOUTH SERVICES — COMMUNITY-BASED RESIDENTIAL PROGRAMS — RESTRICTIONS. The Department of Human Services shall not contract or pay for community-based residential programs within any municipality to house unrelated persons who have been adjudicated delinquent of an act that would constitute a Class A felony or higher or of a sexual offense or convicted of a Class A felony or higher or sexual offense until the following conditions have been met:

"1. Residents within one thousand (1,000) feet of the proposed location of the facility shall be notified by mail;

"2. A public hearing shall be conducted in the community of the proposed location of the facility by the contract provider at least ten (10) days in advance of the contract's effective date. Notice of the hearing

shall be made by mail to each of the residents within 1,000 feet of the proposed location of the facility. The notification requirement shall not apply to already existing facilities at already existing locations.

"Provided further, upon establishment of such facilities within a particular municipality, the contract provider and the Department shall establish and implement a system to receive and respond to complaints and questions from residents of such municipality. In the event the Department and the provider fail to provide satisfactory communication as provided in this section to the residents, such facility may be declared a public nuisance by the municipality.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

25-10-135. Youth services.

A.C.R.C. Notes. Acts 2012, No. 218, § 9, provided: "YOUTH SERVICES — COMMUNITY-BASED RESIDENTIAL PROGRAMS — RESTRICTIONS. The Department of Human Services shall not contract or pay for community-based residential programs within any municipality to house unrelated persons who have been adjudicated delinquent of an act that would constitute a Class A felony or higher or of a sexual offense or convicted of a Class A felony or higher or sexual offense until the following conditions have been met:

"1. Residents within one thousand (1,000) feet of the proposed location of the facility shall be notified by mail;

"2. A public hearing shall be conducted in the community of the proposed location of the facility by the contract provider at least ten (10) days in advance of the contract's effective date. Notice of the hearing

shall be made by mail to each of the residents within 1,000 feet of the proposed location of the facility. The notification requirement shall not apply to already existing facilities at already existing locations.

"Provided further, upon establishment of such facilities within a particular municipality, the contract provider and the Department shall establish and implement a system to receive and respond to complaints and questions from residents of such municipality. In the event the Department and the provider fail to provide satisfactory communication as provided in this section to the residents, such facility may be declared a public nuisance by the municipality.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

SUBCHAPTER 4 — DEPARTMENT OF HUMAN SERVICES STATE INSTITUTIONAL SYSTEM

25-10-401. Creation.

A.C.R.C. Notes. Acts 2012, No. 251, § 21, provides: “ARKANSAS HEALTH CENTER.

“(A) The Department of Human Services shall not close the Arkansas Health Center that provides skilled nursing through specialized services and programs.

“(B) The Department of Human Services shall continue to accept clients for whom it has determined that skilled nursing and specialized services are needed at the Arkansas Health Center.

“(C) No funds shall be transferred or reduced from the Arkansas Health Center, except for use as federal matching funds, below the approved funding level on March 1, 2003 without the prior approval of the Arkansas Legislative Council or the Joint Budget Committee.

“(D) Determining the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appro-

priation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Human Services may operate more efficiently if some flexibility is provided to the Department of Human Services authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 13

DEPARTMENT OF PARKS AND TOURISM

A.C.R.C. Notes. Acts 2012, No. 116, § 24, provided: “CASH PRIZES — STATE PARKS. The Department of Parks & Tourism is hereby authorized to award merchandise, gift certificates and cash prizes to contestants in various special events authorized by the Director of State Parks. Such prizes may be awarded to the 1st,

2nd and 3rd prize winners and shall be payable from the maintenance and operation line item of the Parks Cash Fund. The cash prizes, in aggregate, for all contests, shall not exceed \$10,000 per fiscal year.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 14

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

A.C.R.C. Notes. Acts 2012, No. 274, § 43, provided: “ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES PRO-

GRAM. The Arkansas Department of Environmental Quality shall adopt policies before September 1, 2012 to ensure its

cooperation regarding provision to the Division of Public School Academic Facilities and Transportation copies of the reports of inspections required under Arkansas

Code § 6-21-813 (d) through (f) for the Arkansas Public School Academic Facilities Program Act.”

CHAPTER 15

ADMINISTRATIVE PROCEDURES

SUBCHAPTER 2 — ADMINISTRATIVE PROCEDURE ACT

25-15-202. Definitions.

CASE NOTES

Adjudication.

State employee’s appeal from her termination by a state school for the deaf could not be heard due to lack of jurisdiction because there was no judicial review of such termination decisions absent a public policy exception; such decisions were

legislative rather than adjudicatory. The school’s alleged violation of its non-mandatory reduction policy did not rise to the level of a public policy violation. *Tripcony v. Ark. Sch. for the Deaf*, 2012 Ark. 188, — S.W.3d — (2012).

25-15-210. Administrative adjudication — Decisions.

CASE NOTES

Findings and Conclusions.

Because the Arkansas Health Services Permit Commission did not set forth any findings of fact or conclusions of law to support its decision to grant the transfer of a permit of approval, in accordance with subdivision (b)(2) of this section, the matter had to be remanded. *Twin Rivers Health & Rehab, LLC v. Ark. Health Servs. Permit Comm’n*, 2012 Ark. 15, — S.W.3d — (2012).

Because the Arkansas Motor Vehicle Commission failed in its obligation to make sufficient findings of fact relevant to the contested issue of what constituted the current model year, the supreme court could not determine whether the Commission had resolved that issue in conformity with the law. *Voltage Vehicles v. Ark. Motor Vehicle Comm’n*, 2012 Ark. 386, — S.W.3d — (2012).

25-15-212. Administrative adjudication — Judicial review.

CASE NOTES

ANALYSIS

Applicability.
Adjudication.
Appeal from Circuit Court.
Illustrative Case.
Jurisdiction.
Procedural Irregularities.
Scope of Review.

Applicability.

Although a local utility customer failed to file a notice of appeal to the circuit court as required under Ark. Dist. Ct. R. 9, which applied to an appeal from the municipal utility’s decision, but instead filed a complaint alleging that it was seeking judicial review of a final administrative order, the complaint properly described

the final administrative decision and specified the date of that decision as required. *Mt. Pure, LLC v. Little Rock Wastewater Util.*, 2011 Ark. 258, — S.W.3d — (2011).

Adjudication.

State employee's appeal from her termination by a state school for the deaf could not be heard due to lack of jurisdiction because there was no judicial review of such termination decisions absent a public policy exception; such decisions were legislative rather than adjudicatory. The school's alleged violation of its non-mandatory reduction policy did not rise to the level of a public policy violation. *Tripcony v. Ark. Sch. for the Deaf*, 2012 Ark. 188, — S.W.3d — (2012).

Appeal from Circuit Court.

Because an appraiser's argument that the circuit court erred in determining that she was not permitted to present additional evidence before the agency pursuant to the Arkansas Administrative Procedure Act, subsection (f) of this section was not ruled on by the Arkansas Appraiser Licensing and Certification Board; the supreme court was precluded from considering the argument on appeal; at the circuit court's hearing, the appraiser requested the circuit court to remand the case to present additional evidence pursuant to subsection (f), but she failed to obtain a ruling on the issue. *Chandler v. Ark. Appraiser Licensing & Certification Bd.*, 2011 Ark. 519, — S.W.3d — (2011).

Illustrative Case.

Approval of a private-club permit was proper because a club established that it had a nonprofit purpose other than the consumption of alcohol under § 3-9-202(12)(A)(i) where it operated in conjunction with a restaurant and was designed to enhance the dining experience. Moreover, the Arkansas Alcoholic Beverage Control Division Board's interpretation of § 3-9-202(12)(A)(i) was entitled to deference, and arguments relating to nonprofit status that were not fully developed before the Board were not preserved for appellate review. *Barnes v. Ark. Dep't of*

Fin. & Admin., 2012 Ark. App. 237, — S.W.3d — (2012).

Jurisdiction.

Reviewing court lacked jurisdiction to consider the supplier's appeal, because the circuit court lacked subject-matter jurisdiction over the matter, when the decision of the Office of State Procurement did not emanate from a hearing and the Office did not issue an order containing any findings of fact; administratively, the Office merely determined that the supplier's protest could not be heard, therefore, the decision did not come within the purview of the Arkansas Administrative Procedure Act, and thus the circuit court lacked jurisdiction to review it. *Fatpipe, Inc. v. State*, 2012 Ark. 248, — S.W.3d — (2012).

Procedural Irregularities.

Issuance of a commercial disposal well permit was made upon unlawful procedure and was thus subject to reversal under subdivision (h)(3) of this section because the Arkansas Oil and Gas Commission failed to comply with its own rules pursuant to § 15-71-111(a)(3) when it did not require timely proof of financial assurance under Ark. Oil & Gas Comm'n Rule H-1. *Capstone Oilfield Disposal of Ark., Inc. v. Pope County*, 2012 Ark. App. 231, — S.W.3d — (2012).

Scope of Review.

Because the Capitol Zoning District Commission's decision denying a property owner's application to install a 48-inch-high fence was supported by substantial evidence, it was not arbitrary and capricious. *Capitol Zoning Dist. Comm'n v. Cowan*, 2012 Ark. App. 619, — S.W.3d —, 2012 Ark. App. LEXIS 732 (Oct. 31, 2012).

There was substantial evidence to support the Capitol Zoning District Commission's decision denying a property owner's application to install a 48-inch-high fence. The owner's property was one of the most historic residences in all of Arkansas, and surrounding properties traditionally had fences at or under 40 inches in height. *Capitol Zoning Dist. Comm'n v. Cowan*, 2012 Ark. App. 619, — S.W.3d —, 2012 Ark. App. LEXIS 732 (Oct. 31, 2012).

25-15-213. Hearings generally.**CASE NOTES**

Cited: Capstone Oilfield Disposal of Ark., Inc. v. Pope County, 2012 Ark. App. 231, — S.W.3d — (2012).

CHAPTER 16**STATE OFFICERS****SUBCHAPTER 7 — ATTORNEY GENERAL**

A.C.R.C. Notes. Acts 2012, No. 273, § 19, provided: “QUARTERLY REPORTS. The Office of Attorney General shall on a quarterly basis provide to the Arkansas Legislative Council or Joint Budget Committee a report of all cash funds received from court orders or settlement agreements. The report shall include:

“a) The case name of the court order or settlement agreement.

“b) The amount of funds received by the Office of Attorney General for each court order or settlement agreement.

“c) A plan for disbursement of the funds. If cash funds received from a court order or settlement agreement are expended for any purpose, including consumer education and enforcement activities, the report must itemize specific activities subject to the exclusions provided in Ark. Code Ann. 4-88-111 and 25-1-403(1)(B). The report shall also itemize the specific consumer education and enforcement activities funded for the Office of Attorney General.

“d) If funds received from court order or settlement agreement are given to a specific entity by the Office of Attorney General the report must include:

“1) If the court order or settlement agreement directed monies to be given to a specific entity and;

“2) If the court order or settlement agreement directs funds to a specific entity, the Office of the Attorney General shall provide a summary of input regarding the drafting of the court order or settlement agreement.

“e) If the Office of Attorney General receives funds from a court order or settlement agreement that does not require disbursement of funds to a specific entity, the Office of Attorney General shall report a rationale for disbursing funds to a specific entity.

“f) A report of current balances of all unappropriated cash fund holdings received by court order or settlement agreement by the Office of Attorney General.

“g) The quarterly reports shall be provided no later than the 15th day of the month immediately following the end of each quarter.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

CHAPTER 19**FREEDOM OF INFORMATION ACT OF 1967****SECTION.**

25-19-105. Examination and copying of public records.

25-19-101. Title.

CASE NOTES

ANALYSIS

Appellate Review.
Public Records.

Appellate Review.

Circuit court denied appellant’s complaint against a police department and its police chief for violation of the Freedom of Information Act (FOIA). Upon reviewing the FOIA request that appellant submitted, the appellate court concluded that the circuit court’s finding that the police chief acted in good faith was not clearly erroneous. *Daugherty v. Sipes*, 2012 Ark. App. 233, — S.W.3d — (2012).

Public Records.

Litigation files prepared by an attorney hired by private medical malpractice li-

ability insurance carriers to represent three doctors who worked for the state university were not subject to disclosure under the Freedom of Information Act, §§ 25-19-101 to 25-19-110, because the documents were not public records for purposes of subdivision (a)(1)(A) of this section. As the doctors were sued in their personal capacity, simply changing the records request to name the doctors in their official capacity did not convert the documents from private to public; the documents were also attorney work-product and subject to the attorney-client privilege. *Harrill & Sutter, PLLC v. Farrar*, 2012 Ark. 180, — S.W.3d — (2012).

25-19-104. Penalty.

CASE NOTES

ANALYSIS

In General.
No Violation.

In General.

Circuit court’s determination that this section and § 25-19-106 were unconstitutional was improper because declaratory relief was inappropriate under this section as appellees did not yet have a case or controversy ready for decision by the courts. Appellees received a legal opinion on the effects of certain provisions of the state’s Freedom of Information Act rather

than resolution of an actual controversy. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, — S.W.3d —, 2012 Ark. LEXIS 485 (Dec. 6, 2012).

No Violation.

Appellees’ actions of purging the records did not violate this section because the captain testified that it was police department policy to purge the recordings every 45 days in order to maintain sufficient memory on the server and the driver did not produce any evidence to the contrary. *Daugherty v. Jacksonville Police Dep’t*, 2012 Ark. 264, — S.W.3d — (2012).

25-19-105. Examination and copying of public records.

- (a)(1)(A) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.
- (B) However, access to inspect and copy public records shall be denied to:

(i) A person who at the time of the request has pleaded guilty to or been found guilty of a felony and is incarcerated in a correctional facility; and

(ii) The representative of a person under subdivision (a)(1)(B)(i) of this section unless the representative is the person's attorney who is requesting information that is subject to disclosure under this section.

(2)(A) A citizen may make a request to the custodian to inspect, copy, or receive copies of public records.

(B) The request may be made in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.

(C) The request shall be sufficiently specific to enable the custodian to locate the records with reasonable effort.

(3) If the person to whom the request is directed is not the custodian of the records, the person shall so notify the requester and identify the custodian, if known to or readily ascertainable by the person.

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

(1) State income tax records;

(2) Medical records, adoption records, and education records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, unless their disclosure is consistent with the provisions of that act;

(3) The site files and records maintained by the Arkansas Historic Preservation Program of the Department of Arkansas Heritage and the Arkansas Archeological Survey;

(4) Grand jury minutes;

(5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;

(6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General;

(8) Documents that are protected from disclosure by order or rule of court;

(9)(A) Files that if disclosed would give advantage to competitors or bidders; and

(B)(i) Records maintained by the Arkansas Economic Development Commission related to any business entity's planning, site location, expansion, operations, or product development and marketing, unless approval for release of those records is granted by the business entity.

(ii) However, this exemption shall not be applicable to any records of expenditures or grants made or administered by the commission and otherwise disclosable under the provisions of this chapter;

(10)(A) The identities of law enforcement officers currently working undercover with their agencies and identified in the Arkansas Minimum Standards Office as undercover officers.

(B) Records of the number of undercover officers and agency lists are not exempt from this chapter;

(11) Records containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks or applications thereon, to perform security functions, including, but not limited to, passwords, personal identification numbers, transaction authorization mechanisms, and other means of preventing access to computers, computer systems or networks, or any data residing therein;

(12) Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;

(13) Home addresses of nonelected state employees, nonelected municipal employees, and nonelected county employees contained in employer records, except that the custodian of the records shall verify an employee's city or county of residence or address on record upon request;

(14) Materials, information, examinations, and answers to examinations utilized by boards and commissions for purposes of testing applicants for licensure by state boards or commissions;

(15) Military service discharge records or DD Form 214, the Certificate of Release or Discharge from Active Duty of the United States Department of Defense, filed with the county recorder as provided under § 14-2-102, for veterans discharged from service less than seventy (70) years from the current date;

(16) Vulnerability assessments submitted by a public water system on or before June 30, 2004, to the Administrator of the United States Environmental Protection Agency for a period of ten (10) years from the date of submission;

(17)(A) Records, including analyses, investigations, studies, reports, or recommendations, containing information relating to any Department of Human Services risk or security assessment, known or suspected security vulnerability, or safeguard related to compliance with the Health Insurance Portability and Accountability Act of 1996 or protection of other confidential department information.

(B) The records shall include:

(i) Risk and security assessments;

(ii) Plans and proposals for preventing and mitigating privacy and security risks;

(iii) Emergency response and recovery records;

(iv) Privacy and security plans and procedures; and

(v) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect personal health information or other protected department information.

(C) This subdivision (b)(17) expires on July 1, 2009.

(18)(A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blue-

prints, and plans, containing information relating to security for any public water system.

(B) The records shall include:

- (i) Risk and vulnerability assessments;
- (ii) Plans and proposals for preventing and mitigating security risks;
- (iii) Emergency response and recovery records;
- (iv) Security plans and procedures; and
- (v) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the public water system.

(C) This subdivision (b)(18) expires on July 1, 2013.

(19) Records pertaining to the issuance, renewal, expiration, suspension, or revocation of a license to carry a concealed handgun, or a present or past licensee under § 5-73-301 et seq., including without limitation all records provided to or obtained by any local, state, or federal governments, their officials, agents, or employees in the investigation of an applicant, licensee, or past licensee and all records pertaining to a criminal or health history check conducted on the applicant, licensee, or past licensee except that:

(A) Information or other records regarding an applicant, licensee, or past licensee may be released to a law enforcement agency for the purpose of assisting in a criminal investigation or prosecution, or for determining validity of or eligibility for a license;

(B) Names of an applicant, licensee, or past licensee may be released as contained in investigative or arrest reports of law enforcement that are subject to release as public records; and

(C) The name and the corresponding zip code of an applicant, licensee, or past licensee may be released upon request by a citizen of Arkansas.

(c)(1) Notwithstanding subdivision (b)(12) of this section, all employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.

(3)(A) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within twenty-four (24) hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

(B)(i) If the subject of the records cannot be contacted in person or by telephone within the twenty-four-hour period, the custodian shall

send written notice via overnight mail to the subject of the records at his or her last known address. Either the custodian, requester, or the subject of the records may immediately seek an opinion from the Attorney General, who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter.

(ii) In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his or her opinion.

(C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(d)(1) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.

(2)(A) Upon request and payment of a fee as provided in subdivision (d)(3) of this section, the custodian shall furnish copies of public records if the custodian has the necessary duplicating equipment.

(B) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

(C) A custodian is not required to compile information or create a record in response to a request made under this section.

(3)(A)(i) Except as provided in § 25-19-109 or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records.

(ii) The custodian may also charge the actual costs of mailing or transmitting the record by facsimile or other electronic means.

(iii) If the estimated fee exceeds twenty-five dollars (\$25.00), the custodian may require the requester to pay that fee in advance.

(iv) Copies may be furnished without charge or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest.

(B) The custodian shall provide an itemized breakdown of charges under subdivision (d)(3)(A) of this section.

(e) If a public record is in active use or storage and therefore not available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) working days at which time the record will be available for the exercise of the right given by this chapter.

(f)(1) No request to inspect, copy, or obtain copies of public records shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information.

(2) Any reasonably segregable portion of a record shall be provided after deletion of the exempt information.

(3) The amount of information deleted shall be indicated on the released portion of the record and, if technically feasible, at the place in the record where the deletion was made.

(4) If it is necessary to separate exempt from nonexempt information in order to permit a citizen to inspect, copy, or obtain copies of public records, the custodian shall bear the cost of the separation.

(g) Any computer hardware or software acquired by an entity subject to § 25-19-103(5)(A) after July 1, 2001, shall be in full compliance with the requirements of this section and shall not impede public access to records in electronic form.

(h) Notwithstanding any Arkansas law to the contrary, at the conclusion of any investigation conducted by a state agency in pursuit of civil penalties against the subject of the investigation, any settlement agreement entered into by a state agency shall be deemed a public document for the purposes of this chapter. However, the provisions of this subsection shall not apply to any investigation or settlement agreement involving any state tax covered by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1967, No. 93, § 4; 1977, No. 652, § 2; A.S.A. 1947, § 12-2804; Acts 1987, No. 49, § 1; 1989 (3rd Ex. Sess.), No. 8, § 1; 1993, No. 895, § 1; 1997, No. 540, § 52; 1997, No. 873, § 1; 1997, No. 1335, § 1; 1999, No. 1093, § 1; 2001, No. 1259, § 1; 2001, No. 1336, § 1; 2001, No. 1653, § 2; 2003, No. 213, § 1; 2003, No. 275,

§ 2; 2003, No. 763, § 2; 2003, No. 1214, § 1; 2005, No. 259, § 2; 2005, No. 2003, § 1; 2007, No. 268, § 2; 2007, No. 726, §§ 1, 2; 2007, No. 998, § 2; 2009, No. 631, § 2; 2009, No. 1291, § 1; 2011, No. 99, § 2; 2011, No. 168, § 1.

Publisher's Notes. This section is being set out to reflect a correction in (b)(9).

CASE NOTES

ANALYSIS

Construction.

Applicability.

Attorney-Client Privilege.

Records Subject to Inspection.

Construction.

Trial court erred by finding that the driver received a timely and compliant response from appellees because the response, refusing to comply with the request on the ground that it was too broad and too burdensome, was in direct conflict with the Freedom of Information Act (FOIA) and with the court's case law interpreting the FOIA. *Daugherty v. Jacksonville Police Dep't*, 2012 Ark. 264, — S.W.3d — (2012).

Applicability.

Trial court erred by finding that appellees' requirement that the driver pay a deposit of \$2,475 to obtain the requested records did not violate the Freedom of Information Act because § 25-19-109 did not apply, as the driver stated that she requested only copies of the recordings and did not ask for any type of special conversion or any type of compilation. The applicable provision to the driver's request was subsection (d) of this section, as she simply requested a copy of the files, and therefore appellees could not charge fees that exceeded the cost of reproduction and could not include the hourly rate of a captain in assessing costs to the driver. *Daugherty v. Jacksonville Police Dep't*, 2012 Ark. 264, — S.W.3d — (2012).

Attorney-Client Privilege.

Litigation files prepared by an attorney hired by private medical malpractice liability insurance carriers to represent three doctors who worked for the state university were not subject to disclosure under the Freedom of Information Act, §§ 25-19-101 to 25-19-110, because the documents were not public records for purposes of subdivision (a)(1)(A) of this section. As the doctors were sued in their personal capacity, simply changing the records request to name the doctors in their official capacity did not convert the documents from private to public; the documents were also attorney work-prod-

uct and subject to the attorney-client privilege. *Harrill & Sutter, PLLC v. Farrar*, 2012 Ark. 180, — S.W.3d — (2012).

Records Subject to Inspection.

Judgment was properly awarded to appellee in an action against a police chief, in the chief's capacity as the custodian of records for the police department, for violation of the Arkansas FOIA because an officer's use-of-force reports describing an incident with appellee did not fall within the exemption in subdivision (c)(1) of this section for employee evaluation or job performance records. *Thomas v. Hall*, 2012 Ark. 66, — S.W.3d — (2012).

25-19-106. Open public meetings.

CASE NOTES

ANALYSIS

In General.
No Violation.

In General.

Circuit court's determination that § 25-19-104 and this section were unconstitutional was improper because declaratory relief was inappropriate under § 16-111-104 as appellees did not yet have a case or controversy ready for decision by the courts. Appellees received a legal opinion on the effects of certain provisions of the state's Freedom of Information Act rather than resolution of an actual controversy.

McCutchen v. City of Fort Smith, 2012 Ark. 452, — S.W.3d —, 2012 Ark. LEXIS 485 (Dec. 6, 2012).

No Violation.

In circumstances in which a city administrator, prior to a board study session, prepared a memorandum and draft ordinance and provided the documents to individual board members, no violation of this section of the state FOIA occurred because only information was provided; no solicitation of votes for the proposal took place. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, — S.W.3d —, 2012 Ark. LEXIS 485 (Dec. 6, 2012).

25-19-109. Special requests for electronic information.

CASE NOTES

Fees.

Trial court erred by finding that appellees' requirement that the driver pay a deposit of \$2, 475 to obtain the requested records did not violate the Freedom of Information Act because this section did not apply, as the driver stated that she requested only copies of the recordings and did not ask for any type of special conversion or any type of compilation. The

applicable provision to the driver's request was § 25-19-105(d), as she simply requested a copy of the files, and therefore appellees could not charge fees that exceeded the cost of reproduction and could not include the hourly rate of a captain in assessing costs to the driver. *Daugherty v. Jacksonville Police Dep't*, 2012 Ark. 264, — S.W.3d — (2012).

CHAPTER 30

DEPARTMENT OF CAREER EDUCATION

A.C.R.C. Notes. Acts 2012, No. 277, § 9, provided: "COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT. Section 101(a)(7) of the Rehabilitation Act Amendments of 1992, commonly referred to as the Comprehensive System of Personnel Development (CSPD), requires State Vocational Rehabilitation (VR) agencies to establish qualified personnel standards for rehabilitation personnel, including VR counselors, that are consistent with any national or State-approved or recognized certification, licensing, or registration that apply to a particular profession. In order to comply with the Rehabilitation Act and its State Plan requirements, there is hereby authorized for the Department of Career Education-Arkansas Rehabilitation Services a general waiver of the Financial

Management Guide, R1-19-4-522 Continuing Professional Education. This waiver allows the agency to provide college level coursework in degree programs for any eligible employees selected by the agency. This provision covers any and all formula and discretionary grants funded by the U.S.D.O.E. Rehabilitation Services Administration, now or in the future, including, but not limited to, the Vocational Rehabilitation Program, Supported Employment, Independent Living, and the Staff Development Grant. The waiver applies to federal financial participation (FFP), state general revenue share, and program income.

"The provisions of this section shall be in effect from July 1, 2012 through June 30, 2013."

SUBCHAPTER 2 — ARKANSAS REHABILITATION SERVICES

25-30-206. Arkansas Rehabilitation Services Forgiveness of Student Loan Program.

A.C.R.C. Notes. Acts 2012, No. 277, § 10, provided: "FORGIVENESS OF STUDENT LOAN PROGRAM. The Forgiveness of Student Loan Program shall be available to counselors employed by Arkansas Rehabilitation Services that have been determined eligible by rules promulgated by Arkansas Rehabilitation Services as required by Arkansas Code §25-30-206. These rules shall be submitted to the Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council and receive prior review. These rules must include the following eligibility requirements:

"(1) Satisfactory completion of any probationary period;

"(2) Proof of a student loan that remains unpaid, including the name and address of the creditor;

"(3) An executed employment contract in which the counselor agrees to the following:

"(a) work for Arkansas Rehabilitation Services for a term that equals two (2)

years for each year that the program makes a payment on the counselor's student loan and

"(b) reimburse the program the full amount of any loan payments made under this program in the event that the counselor resigns or is terminated for cause before the term of the contract terminates.

"The amount of payment to be made directly to the counselor's student loan creditor may not exceed:

"(1) Two thousand dollars (\$2,000) per year; or

"(2) Ten thousand dollars (\$10,000) per employee.

"The Arkansas Rehabilitation Services agency shall pay for the Forgiveness of Student Loan Program from the Rehabilitation Program Grants — Grants and Aid line item authorized for the appropriation entitled Rehabilitation Services — Operations in an amount not to exceed eighty thousand dollars (\$80,000) per fiscal year.

"In addition, the Arkansas Rehabilitation Services agency shall provide a for-

mal, written notification to all counselors employed by Arkansas Rehabilitation Services of the availability of the Forgiveness of Student Loan Program by July 1 of each fiscal year. The agency shall include with the notification, the promulgated rules which shall outline the eligibility requirements for participation.

"The agency shall submit a copy of this notification to the Arkansas Legislative

Council or Joint Budget Committee by July 1 of each fiscal year. In addition, Arkansas Rehabilitation Services shall report bi-annually, by the 15th day of the month following the end of each six month period, to the Arkansas Legislative Council or Joint Budget Committee the number of employees participating in the program."

CHAPTER 42

HEALTH INFORMATION TECHNOLOGY

SECTION.

25-42-105. Duties and responsibilities.

25-42-105. Duties and responsibilities.

(a) The Office of Health Information Technology shall coordinate the health information technology initiatives of the state with relevant executive branch agencies, including without limitation state boards, commissions, nonprofit corporations, and institutions of higher education.

(b) The Office of Health Information Technology Coordinator shall serve as the executive officer of the office.

(c) The office shall:

(1) Assure the effective coordination and collaboration of health information technology planning, development, implementation, and financing;

(2) Review all health information technology-related grant applications before submission to funding entities;

(3) Accept, receive, retain, disburse, and administer any state special or general revenue funds or federal funds specifically appropriated for health information technology;

(4) Make contracts and execute all instruments necessary or convenient for carrying out its business;

(5) Adopt rules necessary to carry out the policies and objectives of this chapter;

(6) Plan, establish, and operate the State Health Alliance for Records Exchange until the time when a nonprofit corporation is formed to operate the State Health Alliance for Records Exchange and operational responsibility and authority for the State Health Alliance for Records Exchange is transferred to that nonprofit; and

(7)(A) Establish reasonable fees or charges for the use of the State Health Alliance for Records Exchange to fund the operational costs of the State Health Alliance for Records Exchange and the office.

(B) Fees or charges established under subdivision (c)(7)(A) of this section shall be set with the input and guidance of the users of the State Health Alliance for Records Exchange, stakeholders, and other interested parties.

(C) Fees or charges established under subdivision (c)(7)(A) of this section shall not exceed the total cost of operating the State Health Alliance for Records Exchange, not including staffing costs for the State Health Alliance for Records Exchange and the office.

(D) Users of data under this chapter shall be charged in a manner that is proportional to their use of the State Health Alliance for Records Exchange.

(E) Revenue generated by the fees or charges under subdivision (c)(7) of this section shall be deposited into the Health Information Technology Fund, § 19-5-1244.

History. Acts 2011, No. 891, § 1. ing set out to correct a reference in
Publisher's Notes. This section is be- (c)(7)(E).

TITLE 26

TAXATION

SUBTITLE 6. LOCAL TAXES

CHAPTER.

82. LOCAL SALES AND USE TAX ECONOMIC DEVELOPMENT PROJECT FUNDING ACT.

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 3

PROPERTY SUBJECT TO TAXATION AND EXEMPTIONS

SUBCHAPTER 3 — EXEMPTIONS FROM TAXATION

26-3-302. Intangible personalty.

CASE NOTES

Applicability

Intangible personal property of a cable television company, including franchise agreements, customer relationships, and good will, was subject to ad-valorem assessment and taxation under § 26-26-1606(b). The words “this subchapter” in § 26-26-1606 should be read to mean “this

act,” as they did prior to changes by the Arkansas Code Revision Commission, and therefore included all companies subject to taxation by the Arkansas Public Service Commission. *Falcon Cable Media LP v. Ark. PSC*, 2012 Ark. 463, — S.W.3d —, 2012 Ark. LEXIS 501 (Dec. 13, 2012).

SUBTITLE 3. ADMINISTRATION OF LOCAL TAXES**CHAPTER 26****ASSESSMENT OF TAXES****SUBCHAPTER 16 — UTILITIES AND CARRIERS GENERALLY****26-26-1606. Determination of assessment.****CASE NOTES****Applicability**

Intangible personal property of a cable television company, including franchise agreements, customer relationships, and good will, was subject to ad-valorem assessment and taxation under subsection (b) of this section. The words “this subchapter” in this section should be read to

mean “this act,” as they did prior to changes by the Arkansas Code Revision Commission, and therefore included all companies subject to taxation by the Arkansas Public Service Commission. *Falcon Cable Media LP v. Ark. PSC*, 2012 Ark. 463, — S.W.3d —, 2012 Ark. LEXIS 501 (Dec. 13, 2012).

SUBTITLE 5. STATE TAXES**CHAPTER 51****INCOME TAXES****SUBCHAPTER 7 — UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT****26-51-701. Definitions.****RESEARCH REFERENCES**

ALR. Construction and Application of Uniform Division of Income for Tax Purposes Act (UDITPA) — Determination of Business Income. 74 A.L.R.6th 1.

CHAPTER 54**CORPORATE FRANCHISE TAXES****26-54-112. Reinstatement of corporations.****CASE NOTES****Retroactive.**

Trial court did not err by finding that this sections’s provisions regarding retroactivity applied to defeat rights acquired during a period of forfeiture, which was due to a failure to pay franchise taxes;

because the reinstatement of a corporate charter was retroactive to the date of revocation, a motion to dismiss a corporation’s lawsuit was properly denied. *Beck v. Inter City Transp., Inc.*, 2012 Ark. App. 370, — S.W.3d — (2012).

CHAPTER 58

SEVERANCE TAXES

SUBCHAPTER 1 — GENERAL PROVISIONS

26-58-109. Tax additional to property tax.

CASE NOTES

Severance and Property Taxes Not Illegal.

The co-existence of ad valorem property taxes on minerals, oil, and natural gas interests and the subsequently enacted

severance tax on minerals was explicitly authorized by this section, and was not an illegal duplicative tax. *May v. Akers-Lang*, 2012 Ark. 7, 386 S.W.3d 378 (2012).

26-58-124. Distribution of severance tax generally.

A.C.R.C. Notes. Acts 2012, No. 80, § 5 provided: “MAXIMUM FUNDING ALLOCATION. In no event shall the funding for appropriations made in any fiscal year for the Arkansas Highway and Transportation Department for road and bridge re-

pair, maintenance, and grants exceed the maximum amount of general revenue allocated and distributed under Arkansas Code Annotated 26-58-124 (c)(1) from the previous fiscal year, less six hundred seventy five thousand dollars (\$675,000).”

SUBTITLE 6. LOCAL TAXES

CHAPTER 73

TAXATION GENERALLY

SUBCHAPTER 1 — GENERAL PROVISIONS

26-73-103. Levy of new taxes permitted — Exceptions.

CASE NOTES

Illegal Exactions.

Stormwater utility fee was not an illegal exaction because § 14-235-223(a)(1) did not state that the fee had to be paid by any beneficiary, whether intended or unintended, of the sewerage system, and the

code did not define “sewerage system” to distinguish between the wastewater sewer system and the stormwater sewer system. *Morningstar v. Bush*, 2011 Ark. 350, 383 S.W.3d 840 (2011).

CHAPTER 74

COUNTY SALES AND USE TAXES

SUBCHAPTER 5 — SALES TAX ON FOOD AND LODGING

26-74-501. Levy of tax.

RESEARCH REFERENCES

ALR. Obligation of Online Travel Companies to Collect and Remit Hotel Occupancy Taxes. 61 A.L.R.6th 387.

26-74-503. Payment and collection — Advertising and Promotion Commission.

RESEARCH REFERENCES

ALR. Obligation of Online Travel Companies to Collect and Remit Hotel Occupancy Taxes. 61 A.L.R.6th 387.

CHAPTER 80

SCHOOL DISTRICT TAXES

SUBCHAPTER 1 — GENERAL PROVISIONS

26-80-101. Uniform rate of tax.

CASE NOTES

Excess Funds.

Education commissioner, a department of education, and a state treasurer were not authorized to distribute excess funds to another school district under subdivision (b)(1)(B) of this section; the retention of revenue in excess of foundation funding resulted in variations, which were con-

templated by Ark. Const. art. 14, § 3(a). Moreover, the excess funds did not constitute an overpayment, such that the remedies in § 6-20-2306 could have been implemented. *Kimbrell v. McCleskey*, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

26-80-104. Collection and separation of proceeds.

CASE NOTES

State Tax Not Shown.

In a dispute over a twenty-five mill uniform rate of tax (URT), a trial court erred by finding that the URT revenues were state-tax revenues. School taxes

were a breed of their own that were neither state or local; the URT was not converted into a state tax solely because the revenues were remitted to the Arkansas State Treasurer and then back to the

school districts. *Kimbrell v. McCleskey*, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

CHAPTER 82

LOCAL SALES AND USE TAX ECONOMIC DEVELOPMENT PROJECT FUNDING ACT

SECTION.

26-82-117. Capital improvement bonds.

26-82-117. Capital improvement bonds.

(a) All or a specific portion of the local sales and use tax under this chapter may be pledged to bonds issued under §§ 14-164-301 — 14-164-340.

(b) If pledged under the Local Government Bond Act of 1985, § 14-164-301 et seq., §§ 14-164-337 and 14-164-339 apply to the disposition of the revenues from local sales and use tax so pledged.

(c) The local sales and use tax may not be repealed, abolished, or reduced while any bonds secured by a pledge of the local sales and use tax are outstanding.

History. Acts 2011, No. 828, § 1.

ing set out to reflect a correction in (b) in

Publisher's Notes. This section is be-

the 2011 supplement.

TITLE 27

TRANSPORTATION

SUBTITLE 2. MOTOR VEHICLE REGISTRATION AND LICENSING

CHAPTER 22

MOTOR VEHICLE LIABILITY INSURANCE

27-22-101. Legislative intent — Applicability.

CASE NOTES

Public Policy.

Grant of summary judgment in favor of the insurer and against the insured and his son was appropriate because the exclusionary clause was unambiguous, not in violation of public policy, and applicable to the undisputed facts. Under subsection

(a) of this section, public policy was established by the legislature, and motor-vehicle insurance policy exclusions did not violate public policy. *Hurst v. S. Farm Bureau Cas. Ins. Co.*, 2011 Ark. App. 657 (2011).

SUBTITLE 4. MOTOR VEHICULAR TRAFFIC**CHAPTER 49****GENERAL PROVISIONS****SUBCHAPTER 1 — TITLE, APPLICABILITY, AND CONSTRUCTION GENERALLY****27-49-107. Obedience to police officers required.****CASE NOTES****Officer's Authority**

Trial court believed an officer's testimony that the encounter was no more than the officer trying to direct traffic and appellant's vehicle on a congested and dark street amidst a crime scene where officers' safety was at issue, and while protecting the officers was a specific explanation for knocking on appellant's window, the odor of intoxicants and his appearance gave the required suspicion for an investigation into a potential driving while intoxicated offense; under Ark. R. Crim. P. 3.1 the officer then had a duty to investigate further because it is unlawful for any person who is intoxicated to operate or be in actual physical contract of a motor vehicle. *Ward v. State*, 2012 Ark.

App. 649, — S.W.3d —, 2012 Ark. App. LEXIS 768 (Nov. 14, 2012).

Even if the stop started when the officer knocked on appellant's window, the officer had reasonable suspicion that appellant was endangering other officers on the street, and the officer had authority to require appellant to stop; when the odor of alcohol became apparent, the officer had reasonable suspicion to ask appellant to get out of the vehicle, and as there was probable cause to arrest him for driving while intoxicated, the trial court did not err in denying appellant's motion to suppress. *Ward v. State*, 2012 Ark. App. 649, — S.W.3d —, 2012 Ark. App. LEXIS 768 (Nov. 14, 2012).

CHAPTER 50**PENALTIES AND ENFORCEMENT****SUBCHAPTER 3 — OFFENSES AND PENALTIES GENERALLY****27-50-302. Classification of traffic violations.****CASE NOTES****Evidence.**

Defendant's conviction for speeding in excess of 15 miles per hour over the speed limit, in violation of subdivision (a)(7) of this section, was overturned due to insufficient evidence because while the radar gun measured defendant's speed at 51

mph in a 35 mph zone, the evidence showed that even a properly calibrated radar gun could measure speed only within plus or minus one mph. *Partne Kiesling Daugherty v. State*, 2012 Ark. App. 512, — S.W.3d — (2012).

CHAPTER 51**OPERATION OF VEHICLES — RULES OF THE ROAD****SUBCHAPTER 3 — DRIVING, OVERTAKING, AND PASSING****27-51-301. Vehicles to be driven on right side of roadway — Exceptions.****CASE NOTES****Traffic Stops.**

As the evidence showed that a deputy sheriff had probable cause to believe that defendant's vehicle had violated this sec-

tion by crossing the center line by three feet, the deputy's traffic stop was constitutional. *Webb v. State*, 2011 Ark. 430, — S.W.3d — (2011).

SUBCHAPTER 4 — TURNING, STOPPING, AND SIGNALING**27-51-403. Signals for turning, stopping, changing lanes, or decreasing speed required.****CASE NOTES****ANALYSIS**

Generally.
Motion to Suppress.

Generally.

"May be affected" language means that a turn signal is not required if other traffic is not present. Similarly, this section has been interpreted to mean that other traffic must be present before the obligation to signal arises, with subsection (b) prescribing the manner of signaling if signaling is required by subsection (a) or (c); the Court of Appeals of Arkansas, Division Three,

agrees with that interpretation. *Mitchell v. State*, 2012 Ark. App. 128 (2012).

Motion to Suppress.

In a driving while intoxicated case, a motion to suppress was properly denied because an officer had probable cause to stop appellant for failing to use a turn signal, in violation of this section; there was a close enough question as to whether a vehicle in front of appellant was affected by the movement so as to justify the stop. *Mitchell v. State*, 2012 Ark. App. 128 (2012).

SUBTITLE 5. HIGHWAYS, ROADS, AND STREETS**CHAPTER 65****ARKANSAS STATE HIGHWAY
AND TRANSPORTATION
DEPARTMENT — STATE
HIGHWAY COMMISSION****27-65-102. Administration of department.**

A.C.R.C. Notes. Acts 2012, No. 230, § 9, provided: "REPORTING REQUIRE-

MENTS. The Arkansas Highway Commission is hereby authorized to take ap-

appropriate action as necessary to restrict or reduce the operating, administration, and other associated costs of the State Highway and Transportation Department, including the Arkansas Highway Police Division, for the fiscal year ending June 30, 2013. Provided further, that the Arkansas Highway Commission is directed to furnish the Arkansas Legislative Council

with an expenditure status report regarding the financial activities of the State Highway and Transportation Department at least quarterly, beginning no later than September 30, 1989.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

CHAPTER 74

HIGHWAY BEAUTIFICATION

SUBCHAPTER 2 — OUTDOOR ADVERTISING — SIGNS, ETC. — IN GENERAL

27-74-203. Regulation.

CASE NOTES

De Novo Review Not Authorized.

Outdoor advertising company's failure to timely renew its permits for nonconforming billboards under § 27-74-204(b) properly resulted in the denial of the permits. The company was not entitled to de novo review of the denial of the permits under this section because the right to

erect and maintain a billboard was not statutorily protected as required by that section. *Lamar Co., LLC v. Ark. State Highway & Transp. Dep't*, 2011 Ark. App. 695, 386 S.W.3d 670 (2011), rehearing denied, — S.W.3d —, 2012 Ark. App. LEXIS 35 (Ark. Ct. App. Jan. 11, 2012).

27-74-204. Permitted advertising.

CASE NOTES

Permit Required.

Outdoor advertising company's failure to timely renew its permits for nonconforming billboards under subsection (b) of this section properly resulted in the denial of the permits. New permits could not be issued because the Arkansas State Highway and Transportation Department's agreement with the federal government

would not allow it to grant new Class B permits for signs along a scenic byway, pursuant to 23 U.S.C.S. § 131(g) and subsection (c) of this section. *Lamar Co., LLC v. Ark. State Highway & Transp. Dep't*, 2011 Ark. App. 695, 386 S.W.3d 670 (2011), rehearing denied, — S.W.3d —, 2012 Ark. App. LEXIS 35 (Ark. Ct. App. Jan. 11, 2012).

TITLE 28

WILLS, ESTATES, AND FIDUCIARY RELATIONSHIPS

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

28-1-102. Definitions.

CASE NOTES

Person.

Probate court erred in finding that the limited liability company lacked standing to bring a petition for the determination of heirship, because the limited liability company alleged in the petition that it was a legal entity, so it was a person and

could bring the petition; “person” was defined under subdivision (18) of this section to include a corporation, partnership, or other legal entity. *McVesting, LLC v. Heirs of Macie McGoon*, 2012 Ark. App. 541, — S.W.3d — (2012).

28-1-115. Vacation and modification of orders.

CASE NOTES

Jurisdiction.

Probate court had jurisdiction to set aside its previous order determining heirship, because there was an extended period during which courts had jurisdiction to modify or vacate orders in probate proceedings, there had not been a final termi-

nation of the proceedings, and it was not entirely clear that the order determining heirship would have ended the proceedings. *McVesting, LLC v. Heirs of Macie McGoon*, 2012 Ark. App. 541, — S.W.3d — (2012).

28-1-116. Appeals.

CASE NOTES

ANALYSIS

Jurisdiction.
Stay.

heirship would have ended the proceedings. *McVesting, LLC v. Heirs of Macie McGoon*, 2012 Ark. App. 541, — S.W.3d — (2012).

Jurisdiction.

Probate court had jurisdiction to set aside its previous order determining heirship, because there was an extended period during which courts had jurisdiction to modify or vacate orders in probate proceedings, there had not been a final termination of the proceedings, and it was not entirely clear that the order determining

Stay.

In response to a jurisdictional argument under subdivision (e)(1) of this section, an appellate court considered a recusal argument in a probate matter out of an abundance of caution, even though there were no specific findings of no prejudice or a specific order permitting further proceedings in the order of a companion case.

Ashley v. Ashley, 2012 Ark. App. 230, — S.W.3d — (2012).

SUBTITLE 3. WILLS

CHAPTER 26

CONSTRUCTION AND OPERATION

28-26-104. Failure of a testamentary provision.

CASE NOTES

Death of Legatee or Devisee Prior to Testator.

Circuit court erred in ruling that the interests of beneficiaries who predeceased the surviving settlor of an inter vivos trust lapsed upon the death of the beneficiaries;

rather, the beneficiaries' descendants were entitled to the beneficiaries' shares of the trust distribution upon the settlor's death. *Tait v. Cmty. First Trust Co.*, 2012 Ark. 455, — S.W.3d —, 2012 Ark. LEXIS 487 (Dec. 6, 2012).

SUBTITLE 4. ADMINISTRATION OF DECEDENTS' ESTATES

CHAPTER 40

PROBATE AND GRANT OF ADMINISTRATION

SUBCHAPTER 1 — PROCEEDINGS GENERALLY

28-40-113. Contest of will generally.

CASE NOTES

Timely Filing.

Legal malpractice suit based on an attorney's handling of an estate was not ripe for adjudication because a challenge could still be raised in the probate proceedings

since the longer limitations period for challenges based on discovery of another will applied, even if the challenge was supported by a copy of the will. *Kennedy v. Ferguson*, 679 F.3d 998 (8th Cir. 2012).

CHAPTER 48

PERSONAL REPRESENTATIVES

SUBCHAPTER 1 — GENERAL PROVISIONS

28-48-105. Removal generally.

CASE NOTES

Review.

Decision not to remove the personal representatives was not clearly erroneous, because the appellate court could not say that the circuit courts decision had left a definite and firm conviction that a mistake had been committed, when the circuit court admonished the personal repre-

sentatives to put the widow's interests above their own since they owed her a fiduciary duty, and the circuit court understood that there was animosity but noted that there would be court supervision of the probate process. *Ashley v. Ashley*, 2012 Ark. App. 236, — S.W.3d — (2012).

CHAPTER 53

DISTRIBUTION AND DISCHARGE

SUBCHAPTER 1 — GENERAL PROVISIONS

28-53-101. Determination of heirship.

CASE NOTES

ANALYSIS

Jurisdiction.
Standing.

Jurisdiction.

Probate court had jurisdiction to set aside its previous order determining heirship, because there was an extended period during which courts had jurisdiction to modify or vacate orders in probate proceedings, there had not been a final termination of the proceedings, and it was not entirely clear that the order determining heirship would have ended the proceedings. *McVesting, LLC v. Heirs of Macie*

McGoon, 2012 Ark. App. 541, — S.W.3d — (2012).

Standing.

Probate court erred in finding that the limited liability company lacked standing to bring a petition for the determination of heirship, because the limited liability company alleged in the petition that it was a legal entity, so it was a person and could bring the petition; "person" was defined under § 28-1-102(18) to include a corporation, partnership, or other legal entity. *McVesting, LLC v. Heirs of Macie McGoon*, 2012 Ark. App. 541, — S.W.3d — (2012).

SUBTITLE 5. FIDUCIARY RELATIONSHIPS**CHAPTER 65****GUARDIANS GENERALLY****SUBCHAPTER 1 — GENERAL PROVISIONS****28-65-101. Definitions.****CASE NOTES****Constitutionality.**

On appeal of the order granting a permanent guardianship of appellant's son to his grandmother, the Supreme Court of Arkansas did not address the merits of appellant's constitutional challenge to the guardianship statutes, §§ 28-65-101 to

28-65-707, because the attorney general was not notified of the challenge as required by § 16-111-106(b) and there had not been a complete adversarial development of the constitutional issues. *Mahavie v. Mahavie* (In re A.M.), 2012 Ark. 278, — S.W.3d — (2012).

SUBCHAPTER 2 — APPOINTMENT**28-65-204. Preferences.****CASE NOTES****Parents.**

Paternal grandmother was not appointed the guardian of her grandchild because the mother was preferred under subsection (a) of this section, and a trial court did not find that the mother was unfit; evidence regarding the mother's shortcomings was largely controverted, and the trial court considered allegations that the mother had been deceptive to

healthcare providers. Even though the mother's sexual relationships could have had a significant effect on the children in the household, the mother was married at the time of a final hearing. *Marcellus v. Mays*, 2012 Ark. App. 304, — S.W.3d — (2012).

Cited: *Troeskyn v. Herrington* (In re S.H.), 2012 Ark. 245, — S.W.3d — (2012).

28-65-210. Proof required for appointment of guardian.**CASE NOTES**

Cited: *Troeskyn v. Herrington* (In re S.H.), 2012 Ark. 245, — S.W.3d — (2012).

SUBCHAPTER 4 — TERMINATION OF GUARDIANSHIP**28-65-401. Termination generally.****CASE NOTES****Best Interests of Ward.**

Denial of the mother's petition to terminate guardianship was improper because this section was not applied to her in the least restrictive available method where there was no weight given to her decision

to terminate despite the presumption that she acted in her child's best interest. Therefore, the application of this section violated the mother's constitutional right. *Troeskyn v. Herrington (In re S.H.)*, 2012 Ark. 245, — S.W.3d — (2012).

CHAPTER 68**UNIFORM POWER OF ATTORNEY ACT****SUBCHAPTER 2 — AUTHORITY****28-68-202. Incorporation of authority.****CASE NOTES****Application of Statute.**

Ademption of a devise did not take place as to unexpended, identifiable proceeds of a timber sale because the timber was sold by an attorney-in-fact at a time when the testatrix was incompetent, and the testatrix did not regain testamentary capacity

before her death; the statute did not preclude such a holding because while the estate was unquestionably bound by the sale of the timber, the statute was silent on the issue of who was entitled to the proceeds of the sale. *Rodgers v. Rodgers*, 2012 Ark. 200, — S.W.3d — (2012).

CHAPTER 69**FIDUCIARIES GENERALLY****SUBCHAPTER 1 — GENERAL PROVISIONS****28-69-102. Definitions.****CASE NOTES****Public Policy.**

Trial court considered case law from other jurisdictions that permitted the modification the trustee requested in this case, in order to qualify a beneficiary for public benefits, but the trial court did not find that the modification was permissible under public policy and Arkansas law; the court was not left with a firm conviction that a mistake was committed. *In re Ruby G. Owen Trust*, 2012 Ark. App. 381, — S.W.3d — (2012).

Trustee intended to modify the trust in order to qualify a beneficiary for public benefits; because impoverishing the beneficiary in order to qualify her would make the trust provisions void, the modified provisions would have been void on grounds of public policy, and the trial court's denial of the modification motion was that the purpose for modifying the trust would be defeated. *In re Ruby G. Owen Trust*, 2012 Ark. App. 381, — S.W.3d — (2012).

SUBCHAPTER 3 — INCORPORATION OF POWERS BY REFERENCE

28-69-301. Definitions.

CASE NOTES

Applicability.

State was entitled to the \$5016.61 in appellant's inmate account under the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507 for a portion of the cost of housing appellant, because any money appellant received as a gift from his

mother that was deposited into his inmate account was clearly within § 12-29-502(4)'s definition of the term "estate." This section, which defined "estate" the context of fiduciary relationships, did not apply. *MacKool v. State*, 2012 Ark. 287, — S.W.3d — (2012).

SUBCHAPTER 4 — REVOCATION, MODIFICATION, OR TERMINATION OF TRUST

28-69-401. Consent.

CASE NOTES

ANALYSIS

Modification Denied.

Termination Denied.

Modification Denied.

Trial court considered case law from other jurisdictions that permitted the modification the trustee requested in this case, in order to qualify a beneficiary for public benefits, but the trial court did not find that the modification was permissible under public policy and Arkansas law; the court was not left with a firm conviction that a mistake was committed. In *re Ruby G. Owen Trust*, 2012 Ark. App. 381, — S.W.3d — (2012).

Trustee intended to modify the trust in order to qualify a beneficiary for public benefits; because impoverishing the beneficiary in order to qualify her would make the trust provisions void, the modified provisions would have been void on grounds of public policy, and the trial

court's denial of the modification motion was that the purpose for modifying the trust would be defeated. In *re Ruby G. Owen Trust*, 2012 Ark. App. 381, — S.W.3d — (2012).

Termination Denied.

Circuit court did not err in granting a motion for directed verdict in an action to terminate a trust, because the beneficiary failed to meet her burden of proof under the statutory procedures set forth in this section and § 28-73-411; there was no evidence of a change in circumstances between the establishment of the trust and the settlor's death that would frustrate the purpose of the trust. Neither the timing of the settlor's death, nor the fact that the beneficiary had to disrupt her employment to care for her mother were unforeseen circumstances that frustrated the purpose of the trust. *Buckalew v. Arvest Trust Co., N.A.*, 2013 Ark. App. 28, — S.W.3d —, 2013 Ark. App. LEXIS 35 (Jan. 23, 2013).

CHAPTER 72

PARTICULAR TRUSTS

SUBCHAPTER 4 — ARKANSAS CUSTODIAL TRUST ACT

28-72-417. Distribution on termination.

CASE NOTES

Not Applicable to Inter Vivos Trusts

Circuit court erred in ruling that the interests of beneficiaries who predeceased the surviving settlor of an inter vivos trust lapsed upon the death of the beneficiaries; rather, the beneficiaries' descendants were entitled to the beneficiaries' shares of the trust distribution under subdivision

(a)(3)(iv) of this section, which provides for a deceased beneficiary's interest in a custodial trust to pass to the beneficiary's estate, did not apply to an inter vivos trusts. *Tait v. Cmty. First Trust Co.*, 2012 Ark. 455, — S.W.3d —, 2012 Ark. LEXIS 487 (Dec. 6, 2012).

CHAPTER 73

ARKANSAS TRUST CODE

SUBCHAPTER 1 — GENERAL PROVISIONS AND DEFINITIONS

28-73-112. Rules of construction.

CASE NOTES

Lapse of Deceased Beneficiary's Interest

Circuit court erred in ruling that the interests of beneficiaries who predeceased the surviving settlor of an inter vivos trust lapsed upon the death of the beneficiaries;

rather, the beneficiaries' descendants were entitled to the beneficiaries' shares of the trust distribution. *Tait v. Cmty. First Trust Co.*, 2012 Ark. 455, — S.W.3d —, 2012 Ark. LEXIS 487 (Dec. 6, 2012).

SUBCHAPTER 4 — CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

28-73-411. Modification or termination of noncharitable irrevocable trust by consent.

CASE NOTES

Termination Denied.

Circuit court did not err in granting a motion for directed verdict in an action to terminate a trust, because the beneficiary failed to meet her burden of proof under the statutory procedures set forth in §§ 28-69-401, 28-73-411; there was no evidence of a change in circumstances be-

tween the establishment of the trust and the settlor's death that would frustrate the purpose of the trust. Neither the timing of the settlor's death, nor the fact that the beneficiary had to disrupt her employment to care for her mother were unforeseen circumstances that frustrated the purpose of the trust. *Buckalew v. Arvest*

Trust Co., N.A., 2013 Ark. App. 28, — S.W.3d —, 2013 Ark. App. LEXIS 35 (Jan. 23, 2013).

28-73-415. Reformation to correct mistakes.

CASE NOTES

ANALYSIS

Evidence.
Illustrative Cases.

Evidence.

In a trust reformation action, as a settlor's hearsay statements regarding who should or would benefit from the trust had no bearing on whether the estate itself would benefit from the trust corpus, they were not against the interest of the declarant's estate and thus were not admissible under Ark. R. Evid. 804(b)(3) as statements against interest. *Eft v. Rogers*, 2012 Ark. App. 632, — S.W.3d —, 2012 Ark. App. LEXIS 744 (Nov. 7, 2012).

Where appellants petitioned to reform a family revocable trust to remove appellee as residual beneficiary, the trial court did not abuse its discretion in excluding hearsay testimony regarding certain aspects of

the settlor's emotions and relationship that were not affirmative statements of her intent to amend the trust, and thus, were not admissible under Ark. R. Evid. 803(3) as evidence of her intent to do something in the future. *Eft v. Rogers*, 2012 Ark. App. 632, — S.W.3d —, 2012 Ark. App. LEXIS 744 (Nov. 7, 2012).

Illustrative Cases.

Court properly denied appellants' petition under this section to reform a trust, as they did not show the settlor was not competent when she amended the trust and did not meet the high burden of proof required to remove appellee as the residual beneficiary or to prove that a mistake was made in the drafting of the estate-planning documents. *Eft v. Rogers*, 2012 Ark. App. 632, — S.W.3d —, 2012 Ark. App. LEXIS 744 (Nov. 7, 2012).

SUBCHAPTER 6 — REVOCABLE TRUSTS

28-73-602. Revocation or amendment of revocable trust.

CASE NOTES

Intent.

Circuit court was not clearly wrong in finding that there was clear and convincing evidence that the decedent had transferred his interest in the partnership to the trust, because an attorney involved in

preparing the decedent's estate plan testified as to an exchange of emails in which he described the decedent's interest in the family partnership as being held in the revocable trust. *Ashley v. Ashley*, 2012 Ark. App. 236, — S.W.3d — (2012).

CONSTITUTION OF THE STATE OF ARKANSAS OF 1874

ARTICLE 2

DECLARATION OF RIGHTS

§ 3. Equality before the law.

RESEARCH REFERENCES

ALR. Class-of-One Equal Protection Claims Based Upon Real Estate Development, Zoning, and Planning. 68 A.L.R.6th 229.

CASE NOTES

Pension Benefits.

Section 24-11-102 authorized a board of trustees of a policemen's pension to increase monthly benefits to current retirees by a fixed dollar amount, and the increases for the current retirees did not

violate equal protection under this section because there was a rational basis for imposing them, a lack of cost of living increases. *Bakalekos v. Furlow*, 2011 Ark. 505, 385 S.W.3d 810 (2011).

§ 5. Right to bear arms.

RESEARCH REFERENCES

ALR. Construction and Application of United States Supreme Court Holdings in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268 (2008) and *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020, 177 L. Ed. 2d 894, 2010 U.S. LEXIS 5523 (2010) Respecting Second Amendment Right to Keep and Bear Arms, to State or Local Laws Regulating Firearms or Other Weapons. 64 A.L.R.6th 131.

§ 6. Liberty of the press and of speech — Libel.

RESEARCH REFERENCES

ALR. When Does Use of Pepper Spray, Mace, or Other Similar Chemical Irritants Constitute Violation of Constitutional Rights. 65 A.L.R.6th 93.

Construction and Application of Supreme Court's Holding in *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 2010 U.S. LEXIS 766, 187 L.R.R.M. (BNA)

2961, 159 Lab. Cas. (CCH) P 10166 (2010), That Government May Not Prohibit Independent and Indirect Corporate Expenditures on Political Speech. 65 A.L.R.6th 503.

Constitutionality of Restricting Public Speech in Street, Sidewalk, Park, or Other Public Forum — Characteristics of Forum. 70 A.L.R.6th 513.

Constitutionality of Restricting Public Speech in Street, Sidewalk, Park, or Other Public Forum — Manner of Restriction. 71 A.L.R.6th 471.

Constitutional Challenges to Compelled Speech — General Principles. 72 A.L.R.6th 513.

Constitutional Challenges to Compelled Speech — Particular Situations or Circumstances. 73 A.L.R.6th 281.

Application of First Amendment in School Context — Supreme Court Cases. 57 A.L.R. Fed. 2d 1.

§ 7. Jury trial — Right to — Waiver — Civil cases — Nine jurors agreeing.

CASE NOTES

ANALYSIS

Fair And Impartial Trial.
Property Title Actions.

Fair And Impartial Trial.

Because a juror prematurely decided defendant's guilt before hearing all the evidence and being instructed on the law, defendant's rights to a fair and impartial trial were violated; consequently, the circuit court erred in allowing the juror to

remain on the jury. *Conway v. State*, 2012 Ark. 420, — S.W.3d —, 2012 Ark. LEXIS 433 (Nov. 8, 2012).

Property Title Actions.

Because an action was a quiet title action, rather than an action for ejectment, no constitutional right to a jury trial was present. *Nicholson v. Upland Indus. Dev. Co.*, 2012 Ark. 326, — S.W.3d — (2012).

§ 8. Criminal charges — Self-incrimination — Due process — Double jeopardy — Bail.

RESEARCH REFERENCES

ALR. Failure of State Prosecutor to Disclose Exculpatory Physical Evidence as Violating Due Process — Evidence Other Than Weapons or Personal Items. 56 A.L.R.6th 185.

When Does Use of Pepper Spray, Mace, or Other Similar Chemical Irritants Constitute Violation of Constitutional Rights. 65 A.L.R.6th 93.

What Constitutes "Custodial Interrogation" Within Rule of Requiring that Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation — At Border or Functional Equivalent of Border. 68 A.L.R.6th 607.

Criminal Defendant's Right to Electronic Recordation of Interrogations and Confessions. 69 A.L.R.6th 579.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Suppression Motions Where No Warrant Involved. 71 A.L.R.6th 1.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding

Search and Seizure Issues — Pretrial Motions — Suppression Motions Where Warrant Was Involved. 72 A.L.R.6th 1.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for the Truth — Underlying Homicide and Assault Offenses. 72 A.L.R.6th 437.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Motions Other than for Suppression. 73 A.L.R.6th 1.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for Truth — Underlying Drug Offenses. 73 A.L.R.6th 49.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for the Truth — Underlying Sexual

Offenses. 74 A.L.R.6th 69.

Construction and Application by State Courts of Supreme Court's Ruling in *Pardilla v. Kentucky*, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 2010 U.S. LEXIS 2928 (2010),

That Defense Counsel Has Obligation to Advise Defendant That Entering Guilty Plea Could Result in Deportation. 74 A.L.R.6th 373.

CASE NOTES

ANALYSIS

Double Jeopardy.

Due Process.

Fair Trial.

Right to Counsel.

Double Jeopardy.

Defendant's prior contempt proceedings did not present a double-jeopardy bar to the state's prosecution for criminal non-support, § 5-26-401, because each time defendant failed to pay his child support, he offended his ongoing duty to provide support; the state was not seeking to punish defendant for the acts of nonpayment for which he had already been punished, but rather, the state was attempting to penalize defendant for a violation of the statute for which he had not yet been punished. *Halpaine v. State*, 2011 Ark. 517, — S.W.3d — (2011).

Trial court did not err in determining that consecutive sentencing for aggravated robbery, § 5-12-103(a)(1), first-degree terroristic threatening, § 5-13-301(a)(1)(A), and second-degree battery, § 5-13-202(a)(2), did not violate the prohibition against double jeopardy in this section and the Fifth Amendment because neither first-degree terroristic threatening nor second-degree battery was a lesser-included offense of aggravated robbery since both crimes required proof of additional facts not required by aggravated robbery; the offense of first-degree terroristic threatening requires the elements of threatening to cause the death of the victim and the purpose of terrorizing the victim, and a conviction for second-degree battery requires proof of purposely causing physical injury to the victim. *Walker v. State*, 2012 Ark. App. 61, — S.W.3d — (2012).

Designation of the juvenile for extended juvenile jurisdiction was proper because, as he was not acquitted or convicted of any of the underlying offenses charged in the delinquency petition, the first two double jeopardy protections were not applicable. To the extent that he claimed that he

could face multiple punishments for the same offenses, that claim was rejected as being premature and involving mere speculation. *N.D. v. State*, 2012 Ark. 265, — S.W.3d — (2012).

Dismissal of a second-degree sexual assault case was not warranted because the case was not barred by double jeopardy under U.S. Const. Amend. V and this section of Article 2 as a result of serious prosecutorial misconduct; there was a mistrial where the state asked a question about a prior allegation of abuse. There was no reason for the state to want a mistrial, and there was little indication that it goaded appellant into requesting one. *Cox v. State*, 2012 Ark. App. 499, — S.W.3d — (2012).

Due Process.

Employers did not present the appellate court with any convincing argument regarding how or why the cases they cited were applicable in deciding whether § 11-9-802(c) violated their rights under this section or § 9 of Article II of the Arkansas Constitution, and did not develop their argument with citation to any case law addressing anything approaching the constitutionality of late-payment schemes analogous to § 11-9-802(c). *Owens Planting Co. v. Graham*, 2011 Ark. App. 444, — S.W.3d — (2011).

Argument that appellant's due process rights under this section or Article 2 were violated when a trial court failed to consider all of the sentencing options available after a revocation of probation was not preserved for appellate review because the argument was not raised when appellant was sentenced. *Mewborn v. State*, 2012 Ark. App. 195, — S.W.3d — (2012).

Unemployment compensation claimant waived the right to challenge the admission of hearsay evidence on due process grounds in proceedings before the Arkansas Appeal Tribunal where the claimant did not request a continuance before the Tribunal or petition the Board of Review

to remand the matter to the Tribunal to allow the claimant an opportunity to cross-examine the opposing witnesses. *Blaylock v. Dir., Dep't of Workforce Servs. & Wal-Mart*, 2012 Ark. App. 538, — S.W.3d — (2012).

Fair Trial.

Because a juror prematurely decided defendant's guilt before hearing all the evidence and being instructed on the law, defendant's rights to a fair and impartial trial were violated; consequently, the circuit court erred in allowing the juror to remain on the jury. *Conway v. State*, 2012 Ark. 420, — S.W.3d —, 2012 Ark. LEXIS 433 (Nov. 8, 2012).

Right to Counsel.

Appellant convicted of three counts of rape was not entitled to postconviction relief based on newly discovered evidence that his trial counsel was using methamphetamine while representing appellant and pleaded guilty to drug charges. Appellant did not show that his due process rights under this section of article 2 were violated because he failed to demonstrate how he was prejudiced by trial counsel's alleged impairment. *Charland v. State*, 2012 Ark. 246, — S.W.3d — (2012).

§ 9. Excessive bail or punishment prohibited — Witnesses — Detention.

RESEARCH REFERENCES

ALR. Prison Inmate's Eighth Amendment Rights to Treatment for Sleep Disorders. 68 A.L.R.6th 389.

CASE NOTES

Punishment.

Imposition of a life-without-parole sentence for a 17-year-old juvenile capital-felony-murder offender did not violate the juvenile's right against cruel and unusual punishment. *Whiteside v. State*, 2011 Ark. 371, — S.W.3d — (2011).

Employers did not present the appellate court with any convincing argument regarding how or why the cases they cited

were applicable in deciding whether Ark. Code Ann. § 11-9-802(c) violated their rights under § 8 or this section of Article II of the Arkansas Constitution, and did not develop their argument with citation to any case law addressing anything approaching the constitutionality of late-payment schemes analogous to § 11-9-802(c). *Owens Planting Co. v. Graham*, 2011 Ark. App. 444, — S.W.3d — (2011).

§ 10. Right of accused enumerated — Change of venue.

RESEARCH REFERENCES

ALR. What Constitutes "Custodial Interrogation" by Police Officer Within Rule of *Miranda v. Arizona* Requiring That Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation — In Nonpolice Vehicle for Traffic Stop. 56 A.L.R.6th 323.

What Constitutes "Custodial Interrogation" by Police Officer Within Rule of *Miranda v. Arizona* Requiring That Suspect Be Informed of Federal Constitutional

Rights Before Custodial Interrogation — At Nonpolice Vehicle for Other Than Traffic Stop. 57 A.L.R.6th 83.

What Constitutes "Custodial Interrogation" by Police Officer Within Rule of *Miranda v. Arizona* Requiring That Suspect be Informed of Federal Constitutional Rights Before Custodial Interrogation — Where Unspecified as to Precise Location of Roadside Questioning by Law Enforcement Officers. 58 A.L.R.6th 215.

What Constitutes “Custodial Interrogation” Within Rule of *Miranda v. Arizona* Requiring That Suspect be Informed of Federal Constitutional Rights Before Custodial Interrogation — At Suspect’s Place of Employment or Business. 58 A.L.R.6th 439.

What Constitutes “Custodial Interrogation” Within Rule of *Miranda v. Arizona* Requiring That Suspect be Informed of Federal Constitutional Rights Before Custodial Interrogation — At School. 59 A.L.R.6th 393.

Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Suppression Motions Where No Warrant Involved. 71 A.L.R.6th 1.

Propriety and Prejudicial Effect of Requiring Defendant to Wear Stun Belt or Shock Belt During Course of State Criminal Trial. 71 A.L.R.6th 625.

Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Suppression Motions Where Warrant Was Involved. 72 A.L.R.6th 1.

Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Motions Other than for Suppression. 73 A.L.R.6th 1.

Construction and Application by State Courts of Supreme Court’s Ruling in *Paddilla v. Kentucky*, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 2010 U.S. LEXIS 2928 (2010), That Defense Counsel Has Obligation to Advise Defendant That Entering Guilty Plea Could Result in Deportation. 74 A.L.R.6th 373.

Comment Note: Ineffective Assistance of Counsel in Removal Proceedings — Legal Bases of Entitlement to Representation and Requisites to Establish Prima Facie Case of Ineffectiveness. 58 A.L.R. Fed. 2d 363.

Comment Note: Ineffective Assistance of Counsel in Removal Proceedings — Particular Acts. 59 A.L.R. Fed. 2d 151.

Comment Note: Ineffective Assistance of Counsel in Removal Proceedings — Particular Omissions or Failures. 60 A.L.R. Fed. 2d 59.

CASE NOTES

ANALYSIS

Appellate Review.
Right to Counsel.
Right to Testify.
Right to Trial by Jury.
Witnesses.

Appellate Review.

Appellant did not obtain a ruling that application of Ark. R. Evid. 606(b) violated his right to a fair trial, and the court had held that the failure to obtain a ruling precluded review on appeal. *Arnold v. State*, 2012 Ark. 400, — S.W.3d —, 2012 Ark. LEXIS 417 (Oct. 25, 2012).

Right to Counsel.

While counsel’s persuasive techniques did not rise to the level of coercion, defendant’s Ark. R. Crim. P. 37.1 petition raised issues that challenged whether counsel’s strategic decision to recommend a plea offer was based upon reasonable professional judgment. *Riley v. State*, 2011 Ark. 394, — S.W.3d — (2011).

Because defendant failed to preserve two of defendant’s claims regarding counsel’s alleged ineffectiveness, because counsel’s decision to inform the jury about

defendant’s pending drug charges was one of trial strategy, and because defendant instructed counsel not to introduce any evidence in mitigation at sentencing, defendant failed to show that counsel was ineffective; therefore, defendant’s petition for postconviction relief under Ark. R. App. P. Crim. 37.1 was properly denied. *Sykes v. State*, 2011 Ark. 412, — S.W.3d — (2011).

Denial of the inmate’s petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 was proper because he failed to prove that he received the ineffective assistance of counsel. A juror stated that she had not formed an opinion about the inmate’s guilt or innocence, and affirmed that she would base her decision on the evidence; further, trial counsel was not ineffective with regard to an argument for vindictive sentencing because two different judges presided over the inmate’s trials, different sentencers imposed the two sentences, and thus, the presumption of vindictiveness did not arise. *Butler v. State*, 2011 Ark. 435, — S.W.3d — (2011).

Appellant’s trial counsel was not ineffective for failing to object to a wording

error contained in a verdict form because the correct statutory language was consistently used throughout the other pleadings, instructions, and verdict forms; thus, any error on the part of counsel was harmless, and appellant failed to prove prejudice. *Richardson v. State*, 2011 Ark. 478, — S.W.3d — (2011).

Appellant's trial counsel was not ineffective for failing to object to the trial court's failure to arraign appellant on the enhanced charge of possessing cocaine within 1,000 feet of a public-housing development because appellant was not prejudiced by the lack of a formal arraignment on the enhancement; appellant received the same rights at trial as he would have had he been arraigned, and because appellant was tried on the charge, he waived formal arraignment by appearing and announcing that he was ready for trial. *Richardson v. State*, 2011 Ark. 478, — S.W.3d — (2011).

Inmate was not entitled to habeas corpus relief based on an allegation of ineffectiveness of counsel because that was not a cognizable issue; rather, the claim should have been raised in a timely petition under Ark. R. Crim. P. 37.1. A petition for a writ of habeas corpus was not a substitute for proceeding under Rule 37.1. *Ashby v. State*, 2012 Ark. 48, — S.W.3d — (2012).

Denial of appellant's, an inmate's, petition for postconviction relief from two judgments entered in 2009 on a number of drug-related charges was proper because he was not credible in his testimony to establish that he would not have entered guilty pleas if counsel had not pressured him by requesting more money for trial. He failed to meet his burden of showing prejudice from any deficient performance on the part of trial counsel. *Heard v. State*, 2012 Ark. 67, — S.W.3d — (2012).

Denial of appellant's, an inmate's, petition for writ of certiorari was proper because he failed to prove that he received ineffective assistance of counsel. In part, a search incident to arrest was permissible under Ark. R. Crim. P. 12.4, and the inmate did not set forth any legal theory upon which to challenge either the arrest or the search. *Lowe v. State*, 2012 Ark. 185, — S.W.3d — (2012).

Denial of appellant's, an inmate's, petition for writ of certiorari was proper because he failed to prove that he received

ineffective assistance of counsel. In part, the additional evidence at issue would not have been sufficient to raise a reasonable probability that the factfinder's decision would have been different if the jury had heard the inmate's testimony. *Lowe v. State*, 2012 Ark. 185, — S.W.3d — (2012).

Denial of appellant's, an inmate's, petition for writ of certiorari was proper because the evidence at issue presented a jury question concerning whether the informant had induced the commission of the offense, and the jury was given an instruction on the affirmative defense of entrapment. Thus, the inmate failed to prove that he received ineffective assistance of counsel. *Lowe v. State*, 2012 Ark. 185, — S.W.3d — (2012).

Right to Testify.

Because defendant supported a claim of ineffective assistance of counsel for failure to allow defendant to testify with specific testimony that defendant would have given had defendant taken the stand, the trial court erred in denying defendant's Ark. R. Crim. P. 37.1 petition for postconviction relief without a hearing. *Cowan v. State*, 2011 Ark. 537, — S.W.3d — (2011).

Right to Trial by Jury.

Imposition of a mandatory life-without parole sentence for a juvenile capital-felony-murder offender was not illegal because it did not violate the offender's right to a jury trial. *Whiteside v. State*, 2011 Ark. 371, — S.W.3d — (2011).

Witnesses.

Right of confrontation guaranteed by U.S. Const. Amend. VI and this section extends to a defendant's sentencing proceeding before a jury. To the extent *Wallace v. State*, 2010 Ark. App. 706, 2010 Ark. App. LEXIS 748, conflicted with this holding, it was overruled. *Vankirk v. State*, 2011 Ark. 428, — S.W.3d — (2011).

Where defendant pled guilty to rape and elected to be sentenced by a jury in a bifurcated proceeding, the trial court erred in admitting a videotaped statement of the child rape victim during the sentencing proceeding, because this violated defendant's right of confrontation under U.S. Const. Amend. VI and this section. *Vankirk v. State*, 2011 Ark. 428, — S.W.3d — (2011).

Court assumed that allowing a detective to replay the victim's statement was

error for Confrontation Clause purposes, but the inquiry did not end there, and any error in this regard was rendered harmless, as the objectionable statement was cumulative to a strong case; the victim’s identification of the shooter was already in evidence by other testimony, eyewitnesses were presented who identified appellant as the shooter, and appellant possessed unspent ammunition that was compatible with the pistol and bullet

found, which corroborated the witnesses’ accounts. *Hughes v. State*, 2012 Ark. App. 586, — S.W.3d —, 2012 Ark. App. LEXIS 710 (Oct. 24, 2012).

Statement made to a detective as part of a criminal investigation was testimonial for Confrontation Clause purposes. *Hughes v. State*, 2012 Ark. App. 586, — S.W.3d —, 2012 Ark. App. LEXIS 710 (Oct. 24, 2012).

§ 11. Habeas corpus.

CASE NOTES

Appeal.
Denial of petition for habeas corpus relief was proper, because none of the petitioner’s claims in his petition raised a question of jurisdiction or established that the commitment was invalid on its face; the petitioner’s claims concerning his ha-

bitual-offender status were considered by the trial court when the pleas of guilty were entered, and the trial court’s finding that the status was correct under the facts of the case was affirmed on appeal. *Misenheimer v. Hobbs*, 2012 Ark. 343, — S.W.3d — (2012).

§ 12. Suspension of laws.

CASE NOTES

Legislature’s Authority.
If any laws had been set aside or suspended in the enactment of § 9-27-318, which allowed prosecutors discretion to bring charges against 16-year-olds in the criminal division, it would have been the

General Assembly that did so, which it had the authority to do under this section of article 2 of the Arkansas state constitution. Section 9-27-318 did not violate this section of article 2. *C.B. v. State*, 2012 Ark. 220, — S.W.3d — (2012).

§ 13. Redress of wrongs.

Publisher’s Notes. These case notes are being set out to reflect a correction.

CASE NOTES

ANALYSIS

Constitutionality.
In General.
Income Withholding.
Mental Anguish.
Postconviction Proceedings.
Sovereign Immunity.

Constitutionality.
Summary judgment dismissal of the contractor’s suit was proper, because the contractor’s construction of a natural-gas pipeline wherein space was leased fell squarely within the ambit of the statutory

definition of contractor in § 17-25-101(a)(1), and § 17-25-103(d) did not violate this section, when the statute did not abrogate the right of all contractors to bring suit, but denied that right only to those contractors who did not possess a license; as designed to protect the public, the statute advanced the goal of providing an incentive for contractors to undergo the licensing process to ensure that the standards set by the licensing board were satisfied. *Cent. Okla. Pipeline, Inc. v. Hawk Field Servs., LLC*, 2012 Ark. 157, — S.W.3d — (2012).

In General.

This section is a part of the Bill of Rights, and is a guarantee of rights, and not a restriction on the power of the legislature to enact remedial laws. *Peugh v. Oliger*, 233 Ark. 281, 345 S.W.2d 610 (1961), overruled, *Fountain v. Chicago, R. I. & P. Ry.*, 243 Ark. 947, 422 S.W.2d 878 (1968).

Income Withholding.

There was no merit to the argument that the income-withholding statutory scheme violated this section, because § 9-17-506(a) allowed the employee a way to seek redress in the event the support order was defective. *Schultz v. Butterball*, 2012 Ark. 163, — S.W.3d — (2012).

Mental Anguish.

Statute permitting recovery of damages for mental anguish in wrongful death actions does not violate this section of the Constitution. *Peugh v. Oliger*, 233 Ark. 281, 345 S.W.2d 610 (1961), overruled, *Fountain v. Chicago, R. I. & P. Ry.*, 243 Ark. 947, 422 S.W.2d 878 (1968).

Postconviction Proceedings.

Appellant convicted of three counts of rape was not entitled to postconviction

relief based on newly discovered evidence that his trial counsel was using methamphetamine while representing appellant and pleaded guilty to drug charges. Appellant did not show that his right to an adequate statutory remedy under this section of article 2 was violated because he failed to demonstrate how he was prejudiced by trial counsel's alleged impairment. *Charland v. State*, 2012 Ark. 246, — S.W.3d — (2012).

Sovereign Immunity.

In an action filed against a school district and a bus driver after the rape of a student, the provision of limited immunity under § 21-9-301 did not violate this section of Article 2, and an appellate court was unable to overturn caselaw to the extent that it shielded a school district from accountability under the Arkansas Public Education Act, §§ 6-15-1001 to 1007, because judicial precedent from the Arkansas Supreme Court had to be followed. *Young v. Blytheville Sch. Dist.*, 2013 Ark. App. 50, — S.W.3d —, 2013 Ark. App. LEXIS 68 (Jan. 30, 2013).

§ 15. Unreasonable searches and seizures.**RESEARCH REFERENCES**

ALR. Construction and Application of Supreme Court's Holding in *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485, 2009 U.S. LEXIS 3120, 47 A.L.R. Fed. 2d 657 (2009), that Police May Search Vehicle Incident to Recent Occupant's Arrest Only if Arrestee Is Within Reaching Distance of Passenger Compartment at Time of Search or It Is Reasonable to Believe Vehicle Contains Evidence of Offense — Pretextual Traffic Offenses and Other Criminal Investigations. 56 A.L.R.6th 1.

Necessity of Rendering Medical Assistance as Circumstance Permitting Warrantless Entry or Search of Building or Premises. 58 A.L.R.6th 499.

Propriety of Execution of No-Knock Search Warrant. 59 A.L.R.6th 311.

Validity of Search of Wireless Communication Devices. 62 A.L.R.6th 161.

Search and Seizure: Reasonable Expectation of Privacy in Backyards. 62 A.L.R.6th 413.

Search and Seizure: Reasonable Expectation of Privacy in Outbuildings. 67 A.L.R.6th 531.

Search and Seizure: Reasonable Expectation of Privacy in Side Yards. 69 A.L.R.6th 275.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Suppression Motions Where No Warrant Involved. 71 A.L.R.6th 1.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Suppression Motions Where Warrant Was Involved. 72 A.L.R.6th 1.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Ar-

rest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for the Truth — Underlying Homicide and Assault Offenses. 72 A.L.R.6th 437.

Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Motions Other than for Suppression. 73 A.L.R.6th 1.

Reverse-Franks Claims, Where Police

Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for Truth — Underlying Drug Offenses. 73 A.L.R.6th 49.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for the Truth — Underlying Sexual Offenses. 74 A.L.R.6th 69.

CASE NOTES

ANALYSIS

Traffic Stops.

Warrantless Search.

--Arrest.

Traffic Stops.

As the evidence showed that a deputy sheriff had probable cause to believe that defendant’s vehicle had violated § 27-51-301 by crossing the center line by three feet, the deputy’s traffic stop was constitutional. Webb v. State, 2011 Ark. 430, — S.W.3d — (2011).

Warrantless Search.

Trial court’s finding that a deputy sheriff had defendant’s consent to a pat-down search after a traffic stop was not clearly erroneous. Though defendant testified that he never consented to the search, the

trial court was entitled to find the contrary testimony of the deputy to be more credible, and there was no evidence that defendant was coerced into consenting. Webb v. State, 2011 Ark. 430, — S.W.3d — (2011).

Warrants.

--Arrest.

Motion to suppress should have been granted in a drug case because there was no reasonable basis for officers to believe that appellant was present before executing an arrest warrant; moreover, there were no exigent circumstances under Ark. R. Crim. P. 14.3 because there was no movement observed in the surveillance conducted before the entry. Gutierrez v. State, 2012 Ark. App. 628, — S.W.3d —, 2012 Ark. App. LEXIS 740 (Nov. 7, 2012).

§ 17. Attainder — Ex post facto laws.

RESEARCH REFERENCES

ALR. Construction and Application of U.S. Const. Art. I, § 9, cl. 3, Proscribing Federal Bills of Attainder. 62 A.L.R.6th 517.

Construction and Application of U.S. Const. Art. I, § 10, cl. 1, and State Constitutional Provisions Proscribing State Bills of Attainder. 63 A.L.R.6th 1.

ARTICLE 4

DEPARTMENTS

§ 1. Departments of government.

CASE NOTES

ANALYSIS

Delegation of Powers.

Prosecutor’s Authority.

Delegation of Powers.

Supreme Court declared the entirety of the Method of Execution Act of 2009 un-

constitutional. The legislature abdicated its responsibility and passed to the Department of Correction the unfettered discretion to determine all protocol and procedures, most notably the chemicals to be used, for a state execution. *Hobbs v. Jones*, 2012 Ark. 293, — S.W.3d — (2012).

Prosecutor's Authority.

Section 9-27-318, which vested prosecutors with the discretion to bring felony charges against 16-year-olds in the crimi-

nal divisions of circuit courts, was substantive law and not a rule of pleading, practice, and procedure; therefore, it did not violate separation of powers under this section or § 2 of article 4 of the Arkansas state constitution. Also, § 9-27-318(c) did not deny a juvenile equal protection of the law because treatment as a juvenile was not an inherent right and could be modified by the legislature. *C.B. v. State*, 2012 Ark. 220, — S.W.3d — (2012).

§ 2. Separation of departments.

CASE NOTES

ANALYSIS

Delegation of Powers.
Judicial Power.

Delegation of Powers.

Supreme Court declared the entirety of the Method of Execution Act of 2009 unconstitutional. The legislature abdicated its responsibility and passed to the Department of Correction the unfettered discretion to determine all protocol and procedures, most notably the chemicals to be used, for a state execution. *Hobbs v. Jones*, 2012 Ark. 293, — S.W.3d — (2012).

Judicial Power.

Section 9-27-318, which vested prosecutors with the discretion to bring felony

charges against 16-year-olds in the criminal divisions of circuit courts, was substantive law and not a rule of pleading, practice, and procedure; therefore, it did not violate separation of powers under § 1 or this section of article 4 of the Arkansas state constitution. Also, § 9-27-318(c) did not deny a juvenile equal protection of the law because treatment as a juvenile was not an inherent right and could be modified by the legislature. *C.B. v. State*, 2012 Ark. 220, — S.W.3d — (2012).

ARTICLE 5

LEGISLATIVE DEPARTMENT

§ 1. Initiative and Referendum.

CASE NOTES

ANALYSIS

Ballot Title.
Petitions.
Popular Name.

Ballot Title.

Ballot title of a measure was sufficient under this section of Article 5 (amended by Ark. Const. Amend. 7) because the title, although lengthy, informed the voters in an intelligible, honest, and impartial manner of the substantive matter of the act. The title was not unduly long or

misleading, and it did not have to include every detail, term, definition, or possible consequence of the act. *Cox v. Martin*, 2012 Ark. 352, — S.W.3d — (2012).

Petitions.

Under this amendment and § 7-9-111(d), a petition had to on its face contain, at the time of the filing, the required signatures, and in order to qualify for additional time, the petition had to contain a sufficient number of signatures pursuant to the state-wide and county-wide

requirement, before the thirty-day provision to correct deficiencies applied; the corporation failed to provide the court with any evidence of the validity of its petition. *Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

Popular Name.

Popular name of a measure was sufficient under this section of Article 5

(amended by Ark. Const. Amend. 7) because the phrase “medical marijuana” sufficiently conveyed to voters the topic of medicinal use of marijuana and was not misleading, partisan, or defective. *Cox v. Martin*, 2012 Ark. 352, — S.W.3d — (2012).

§ 23. Revival, amendment or extension of laws.

CASE NOTES

Explicit Repeal.

Section 16-93-611 [repealed], which was amended to repeal a sunset provision of a rule requiring inmates convicted of manufacturing methamphetamine to serve at least 70 percent of their sentences before being eligible for parole, was constitu-

tional under this section, because the constitutional provision referred only to enactment of laws by reference to their titles and did not prohibit repeal of laws by reference to their titles. *Rowe v. Hobbs*, 2012 Ark. 244, — S.W.3d — (2012).

§ 32. Workmen’s Compensation Laws — Actions for personal injuries.

CASE NOTES

ANALYSIS

Exclusive Remedy.
Injuries to Persons or Property.

Exclusive Remedy.

Arkansas Supreme Court’s interpretation of § 11-9-105 extending immunity to a pilot in a negligence action, as a co-employee, in a workers’ compensation matter did not contravene the Arkansas Constitution. *Miller v. Enders*, 2013 Ark. 23, — S.W.3d —, 2013 Ark. LEXIS 38 (Jan. 31, 2013).

Injuries to Persons or Property.

Section 16-55-208 was unconstitutional under this section of Article 5 because it limited the amount of recovery outside of an employment relationship. Therefore, a punitive damage award of \$42 million against a manufacturer of genetically altered rice that allowed its rice to contaminate conventional seed was upheld. *Bayer CropScience LP v. Schafer*, 2011 Ark. 518, — S.W.3d — (2011).

ARTICLE 6

EXECUTIVE DEPARTMENT

§ 18. Pardoning power.

CASE NOTES

Limitation of Pardoning Power.

Trial court did not err in dismissing an inmate’s complaint because the complaint failed to state a claim based on a separation-of-powers violation; the restrictions

on the Arkansas Governor’s clemency power that the inmate contended diminished it were not sufficient to substantially deprive the Governor of the authority to act. *Holloway v. Beebe*, 2013 Ark. 12,

— S.W.3d —, 2013 Ark. LEXIS 12 (Jan. 17, 2013).

ARTICLE 7

JUDICIAL DEPARTMENT

§ 28. County courts — Jurisdiction — Single judge holding court.

CASE NOTES

Taxes.

Arkansas Supreme Court lacked jurisdiction to consider the appeal from the circuit court, because the circuit court lacked jurisdiction to dismiss the complaint for failure to state a cause of action, when appellants' complaint challenged how the county was distributing the proceeds collected from the library tax, and

such a challenge to the distribution of the tax proceeds should have been raised in county court pursuant to this section of Article 7 and § 14-14-1105(b)(1); it was undisputed that the case dealt with a county ad valorem tax. *Carnegie Pub. Library v. Carroll County*, 2012 Ark. 128, — S.W.3d — (2012).

§ 49. Style of process and of indictments.

CASE NOTES

ANALYSIS

Amendment.

Insufficiency.

Presumption of Validity.

Amendment.

Trial court committed no error in allowing the state to orally amend the information to include the contra pacem clauses as required by this section because the amendment conformed to the requirements of § 16-85-407; the amendment adding the contra pacem clauses did not change the nature or degree of the crimes charged, nor did it compromise defendant's ability to make a defense, the amendment resulted in no prejudice, and defendant did not claim surprise or request a continuance after the amendment was granted. *Walker v. State*, 2012 Ark. App. 61, — S.W.3d — (2012).

Insufficiency.

Court erred in finding that service of process was effective, because the sum-

mons and complaint were not delivered to the debtor personally, and while the summons and complaint were undisputedly left with the debtor's husband, the creditor offered no evidence that the husband was an agent authorized to receive service of process on behalf of the debtor under Ark. R. Civ. P. 4(d)(8)(C). *Dobbs v. Discover Bank*, 2012 Ark. App. 678, — S.W.3d —, 2012 Ark. App. LEXIS 797 (Nov. 28, 2012).

Presumption of Validity.

Appellant did not offer sufficient evidence to rebut the presumption of validity of a signature created by the circuit court's seal on a summons. The circuit court's seal gave the presumption of validity to the signature that was not rebutted and, therefore, strict compliance with the signature requirement of Ark. R. Civ. P. 4(b) and this section of Ark. Const. Article VII was satisfied. *Unimeks, LLC v. Puro-lite*, 2012 Ark. 20, — S.W.3d — (2012).

ARTICLE 9

EXEMPTION

§ 1. Personal property exemptions of persons not heads of families.

CASE NOTES

Construction.

Debtor was entitled to claim exemptions under this section and Ark. Const. Art. 9, § 4, for cash and his rural homestead. Larger exemptions claimed under § 16-66-218(a)(2) and (4) were invalid

based on the unconstitutionality of those subsections. The trustee was granted leave to bring an adversary action to avoid a deed of trust. *In re Kelley*, 455 B.R. 710 (Bankr. E.D. Ark. 2011).

§ 2. Heads of families — Exempt personal property.

CASE NOTES

Application.

Section 16-66-220(a)(1) was not unconstitutional, because the IRA exemption was not an absolute exemption of all personal property, and as such, did not offend this section of Article 9; as long as the exemption at issue was not an absolute

exemption of all personal property, but instead related only to exempting certain funds from general garnishment statutes, then the exemption did not violate this section. *Clinical Study Ctrs., Inc. v. Boellner*, 2012 Ark. 266, — S.W.3d — (2012).

§ 3. Homestead exemption from legal process — Exceptions.

CASE NOTES

ANALYSIS

Abandonment.
Bankruptcy.

Abandonment.

Debtors were not entitled to a homestead exemption under 11 U.S.C.S. § 522(b)(3) based on this section and Ark. Const. Art. 9, § 4. They had abandoned the property when they left it in the belief that a pending sale would close, and they had not returned to it or impressed upon it any characteristics of a homestead at the time they filed bankruptcy. *In re Ellis*, 456 B.R. 401 (Bankr. E.D. Ark. 2011).

Bankruptcy.

Through 11 U.S.C.S. § 544(a)(1), the bankruptcy provided Chapter 12 debtors in possession with judgment lien rights under § 16-65-117(a)(1), but the property was subject to a homestead under this section of Article 9 to which such a lien could not attach, thus, avoidance of creditor bank's mortgage was not available under § 544(a)(1). *Caine v. First State Bank (In re Caine)*, 462 B.R. 688 (Bankr. W.D. Ark. 2011).

§ 4. Rural homestead — Acreage — Value.

CASE NOTES

ANALYSIS

Abandonment.

City, Town or Village.

Abandonment.

Debtors were not entitled to a homestead exemption under 11 U.S.C.S. § 522(b)(3) based on Ark. Const. Art. 9, § 3 and this section. They had abandoned the property when they left it in the belief that a pending sale would close, and they had not returned to it or impressed upon it any characteristics of a homestead at the time they filed bankruptcy. *In re Ellis*, 456 B.R. 401 (Bankr. E.D. Ark. 2011).

City, Town or Village.

Debtor was entitled to claim exemptions under Ark. Const. Art. 9, § 1 and this section, for cash and his rural homestead. Larger exemptions claimed under § 16-66-218(a)(2) and (4) were invalid based on the unconstitutionality of those subsections. The trustee was granted leave to bring an adversary action to avoid a deed of trust. *In re Kelley*, 455 B.R. 710 (Bankr. E.D. Ark. 2011).

ARTICLE 12

MUNICIPAL AND PRIVATE CORPORATIONS

§ 12. State not to assume liabilities of political subdivisions or private corporations — Indebtedness to state — Release.

CASE NOTES

State University.

Arkansas Public Service Commission did not err in ruling that an indemnity clause contained in facilities agreements an energy company entered into with a university violated this section of Ark. Const. Art. 12 because the indemnity clause was in irreconcilable conflict with

the constitutional provision; the term “educational purposes,” which is not expressly listed in the “public welfare and defense” exception to this section, is clearly not within its intended meaning. *Entergy Ark., Inc. v. Ark. PSC*, 2011 Ark. App. 453, — S.W.3d — (2011).

ARTICLE 14

EDUCATION

§ 3. School tax — Budget — Approval of tax rate (Const., Art. 14, § 3, as amended by Const. Amend. 11, Const. Amend. 40, amended, and Const. Amend. 74).

CASE NOTES

School Districts.

In a dispute over a twenty-five mill uniform rate of tax (URT), a trial court erred by finding that the URT revenues were state-tax revenues. School taxes

were a breed of their own that were neither state or local; the URT was not converted into a state tax solely because the revenues were remitted to the Arkansas State Treasurer and then back to the

school districts. *Kimbrell v. McCleskey*, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

Education commissioner, a department of education, and a state treasurer were not authorized to distribute excess funds to another school district under § 26-80-101(b)(1)(B); the retention of revenue in excess of foundation funding resulted in

variations, which were contemplated by subsection (a) of this section of article 14. Moreover, the excess funds did not constitute an overpayment, such that the remedies in § 6-20-2306 could have been implemented. *Kimbrell v. McCleskey*, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

ARTICLE 16

FINANCE AND TAXATION

§ 5. Property taxed according to value — Procedures for valuation — Tax exemptions.

CASE NOTES

ANALYSIS

Minerals.

Public Property Not Exempt from Taxation.

System Not Exempt from Ad Valorem Taxation.

Minerals.

Under this section, gas that remains as a mineral in the ground is valued at zero, but a value is assessed for tax purposes if it is produced and sold. Such mineral interests are tangible real property to be valued by county assessors and taxed equally and uniformly, as required by this section. *May v. Akers-Lang*, 2012 Ark. 7, 386 S.W.3d 378 (2012).

Public Property Not Exempt from Taxation.

Shopping center owned by the Arkansas Teacher Retirement System (ATRS) was not exempt from ad valorem taxation, under subsection (b) of this section, because, (1) to be exempt, public property had to be used exclusively for a public

purpose, (2) it was undisputed that the property was leased to private businesses, and (3) the fact that income from the property was used to fulfill the function of the ATRS, mandated in § 24-7-403(a), to provide benefits, did not show the property was used exclusively for a public purpose. *Ark. Teacher Ret. Sys. v. Short*, 2011 Ark. 263, 381 S.W.3d 834 (2011).

System Not Exempt from Ad Valorem Taxation.

Shopping center owned by the Arkansas Teacher Retirement System was not exempt from ad valorem taxation, under subsection (b) of this section, despite §§ 24-2-703 and 24-7-204, purportedly exempting the property, because (1) the statutes had to yield to the Arkansas Constitution, under which public property was only exempt if the property was used exclusively for a public purpose, and (2) it was undisputed that the property was leased to private businesses. *Ark. Teacher Ret. Sys. v. Short*, 2011 Ark. 263, 381 S.W.3d 834 (2011).

§ 13. Illegal exactions.

CASE NOTES

ANALYSIS

Jurisdiction.

Taxes.

Jurisdiction.

Arkansas Supreme Court lacked juris-

diction to consider the appeal from the circuit court, because the circuit court lacked jurisdiction to dismiss the complaint for failure to state a cause of action, when appellants' complaint challenged how the county was distributing the pro-

ceeds collected from the library tax, and such a challenge to the distribution of the tax proceeds should have been raised in county court pursuant to Ark. Const. Art. 7, § 28 and § 14-14-1105(b)(1); it was undisputed that the case dealt with a county ad valorem tax. *Carnegie Pub. Library v. Carroll County*, 2012 Ark. 128, — S.W.3d — (2012).

Taxes.

As a cable-services provider's lawsuit did not challenge the validity of the underlying tax, but alleged that the ad valorem assessment was carried out in an

illegal fashion due to its property falling within a statutory exemption, its suit did not come within the illegal-exaction provision of this section. *Comcast of Little Rock v. Bradshaw*, 2011 Ark. 431, — S.W.3d — (2011).

Ad valorem royalty tax on oil and gas produced from taxpayers' land was not an illegal exaction prohibited by this section; the crux of the taxpayers' contention was the timing of the taxation, after production, rather than the tax itself. *May v. Akers-Lang*, 2012 Ark. 7, 386 S.W.3d 378 (2012).

§ 15. Assessment of residential property and agricultural, pasture, timber, residential and commercial land.

CASE NOTES

Residential Property.

Subsection (a) of this section of article 16 does not state that property may be classified as "residential" only when the owner lives on the land; rather, this subsection explains that "residential property" that is used solely as the principal place of residence of the owner must be assessed in accordance with its value as a residence, as opposed to another method

of valuation. The requirement in this subsection does not apply to "residential property" that is not used solely as the principal place of residence of the owner; therefore, an argument that a residential classification was inappropriate because two taxpayers did not live on the land was rejected. *McWilliams v. Pope County Bd. of Equalization*, 2012 Ark. 427, — S.W.3d —, 2012 Ark. LEXIS 451 (Nov. 15, 2012).

ARTICLE 19

MISCELLANEOUS PROVISIONS

§ 13. [Repealed.]

CASE NOTES

Post-Judgment Interest.

While a circuit court erred in fragmenting a jury verdict, and awarding the borrowers attorney fees outside the time limits of Ark. R. Civ. P. 54(e)(2), and post-judgment interest in excess of that

authorized by this section, their amended complaint was properly dismissed as untimely under Ark. R. Civ. P. 15(a). *Mfrs. & Traders Trust Co. v. Nickelson*, 2011 Ark. App. 557, — S.W.3d — (2011).

§ 22. Constitutional amendments.

CASE NOTES

ANALYSIS

Ballot Title.
Requirement of Separate Vote.

Ballot Title.

Ballot title for a proposed constitutional amendment, now codified as Ark. Const.

Amend. 89, complied with this section in that it identified and distinguished the amendment and was not worded in some way as to constitute a manifest fraud upon the public. *Forrester v. Martin*, 2011 Ark. 277, — S.W.3d — (2011).

In the case of proposed constitutional amendment, now codified as Ark. Const. Amend. 89, § 7-9-204, was at variance with this section, and violated the Arkansas Constitution. *Forrester v. Martin*, 2011 Ark. 277, — S.W.3d — (2011).

Requirement of Separate Vote.

Ark. Const. Amend. 89, which concerned public and private debt obligation, did not violate the separate-issue requirement under this section because each relevant section related to the general subject of the amendment and was reasonably germane to the other sections. *Forrester v. Martin*, 2011 Ark. 277, — S.W.3d — (2011).

AMENDMENTS TO THE CONSTITUTION OF ARKANSAS
OF 1874

AMENDMENT.

78. [CITY AND COUNTY GOVERN-
MENT REDEVELOPMENT]
91. [GENERAL OBLIGATION FOUR-

AMENDMENT.

LANE HIGHWAY CONSTRUC-
TION AND IMPROVEMENT
BONDS].

AMEND. 7. INITIATIVE AND REFERENDUM (CONST., ART. 5,
§ 1, AMENDED).

CASE NOTES

ANALYSIS

Ballot Title.
Petition.
Popular Name.
Substantive Constitutional Challenges.

Ballot Title.

Ballot title of a measure was sufficient under Ark. Const. Art. 5, § 1 (amended by this amendment) because the title, although lengthy, informed the voters in an intelligible, honest, and impartial manner of the substantive matter of the act. The title was not unduly long or misleading, and it did not have to include every detail, term, definition, or possible consequence of the act. Cox v. Martin, 2012 Ark. 352, — S.W.3d — (2012).

Because the initiative sponsors’ revised ballot title was something clearly different than the original ballot title, no signature collected under the former title may support certification of the revised ballot title under this amendment or §§ 7-9-106(a) or 7-9-104(a); the Secretary of State’s certification was vacated and any votes cast could not be counted. Walmsley v. Martin, 2012 Ark. 370, — S.W.3d — (2012).

Petition.

Under this amendment and § 7-9-111(d), a petition had to on its face contain, at the time of the filing, the required

signatures, and in order to qualify for additional time, the petition had to contain a sufficient number of signatures pursuant to the state-wide and county-wide requirement, before the thirty-day provision to correct deficiencies applied; the corporation failed to provide the court with any evidence of the validity of its petition. Ark. Hotels & Entm’t, Inc. v. Martin, 2012 Ark. 335, — S.W.3d — (2012).

Popular Name.

Popular name of a measure was sufficient under Ark. Const. Art. 5, § 1 (amended by this amendment) because the phrase “medical marijuana” sufficiently conveyed to voters the topic of medicinal use of marijuana and was not misleading, partisan, or defective. Cox v. Martin, 2012 Ark. 352, — S.W.3d — (2012).

Substantive Constitutional Challenges.

Substantive constitutional challenges to a proposed measure raised issues that were not ripe for review, and hypothetical scenarios asserted by the measure’s opponents did not show that the act, if passed, would clearly conflict with any constitutional provisions or that it was clearly contrary to any state or federal laws. Cox v. Martin, 2012 Ark. 352, — S.W.3d — (2012).

AMEND. 28. REGULATING PRACTICE OF LAW.**CASE NOTES****ANALYSIS**

Judiciary Authority.
Jurisdiction.

attorneys at law. *Ligon v. Davis*, 2012 Ark. 440, — S.W.3d —, 2012 Ark. LEXIS 470 (Nov. 29, 2012).

Judiciary Authority.

Circuit court's order to dismiss the attorney's conviction and to seal the record of the criminal proceeding was not binding on the Arkansas Supreme Court for purposes of the disciplinary proceeding against the attorney because the court could not be bound by an expungement order made pursuant to a legislative enactment when engaged in its constitutional mandate to regulate and discipline

Jurisdiction.

Circuit court erred in finding that an arbitrator, rather than the court, should decide who could represent a party in arbitration proceedings because the issue falls squarely within the ambit of the state supreme court's constitutional powers and cannot be decided by an arbitration body. *Nisha, LLC v. Tribuilt Constr. Group, LLC*, 2012 Ark. 130, — S.W.3d — (2012).

AMEND. 47. STATE AD VALOREM TAX PROHIBITION.**CASE NOTES****Education.**

In a dispute over a twenty-five mill uniform rate of tax (URT), a trial court erred by finding that the URT revenues were state-tax revenues. School taxes were a breed of their own that were neither state or local; the URT was not con-

verted into a state tax solely because the revenues were remitted to the Arkansas State Treasurer and then back to the school districts. *Kimbrell v. McCleskey*, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

AMEND. 74. SCHOOL TAX — BUDGET — APPROVAL OF TAX RATE (CONST., ART. 14, § 3, AS AMENDED BY CONST. AMEND. 11 AND CONST. AMEND. 40, AMENDED)

CASE NOTES**Excess Funds.**

The Education Commissioner, the Department of Education and the Arkansas State Treasurer were not authorized to distribute excess funds to another school district under § 26-80-101(b)(1)(B); the retention of revenue in excess of foundation funding resulted in variations, which

were contemplated by Ark. Const. art. 14, § 3(a). Moreover, the excess funds did not constitute an overpayment, such that the remedies in § 6-20-2306 could have been implemented. *Kimbrell v. McCleskey*, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

AMEND. 78. [CITY AND COUNTY GOVERNMENT REDEVELOPMENT]

Publisher's Notes. This amendment, from H.J.R. 1012 of 1999, was adopted at the November 2000 general election and

approved by a vote of 427,407 for and 355,943 against.

This amendment was designated as

Amendment 78 by the Secretary of State, and was known as Amendment No. 1 on the general election ballot for 2000:

“The City and County Government Redevelopment Bond and Short Term Fi-

nancing Amendment.” The bracketed heading was added by the Publisher.

This Publisher’s Note is being set out to correct an error in the bound volume.

§ 2. [Short-term financing obligations].

(a) For the purpose of acquiring, constructing, installing or renting real property or tangible personal property having an expected useful life of more than one (1) year, municipalities and counties may incur short-term financing obligations maturing over a period of, or having a term, not to exceed five (5) years. Such obligations may bear interest. The aggregate principal amount of short-term financing obligations incurred by a municipality or a county pursuant to this section shall not exceed five percent (5%) of the assessed value of taxable property located within the municipality or two and one half percent (2.5%) of the assessed value of taxable property located within the county, as determined by the last tax assessment completed before the last obligation was incurred by the city or county. The total annual principal and interest payments in each fiscal year on all outstanding obligations of a municipality or a county pursuant to this section shall be charged against and paid from the general revenues for such fiscal year, which may include road fund revenues. Tax revenues earmarked for solid waste disposal purposes may be used to pay printing and other costs associated with bonds issued under this amendment for solid waste disposal purposes.

(b) As used here:

(1) “Short-term financing obligation” means a debt, a note, an installment purchase agreement, a lease, a lease-purchase contract, or any other similar agreement, whether secured or unsecured; provided, that the obligation shall mature over a period of, or have a term, not to exceed five (5) years.

(2) Repealed.

(c) The provisions of this section shall be self-executing. (Amended by Const. Amend. 89.)

Publisher’s Notes. This amendment repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 (now Amend. 89) and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, this section read:

“(a) For the purpose of acquiring, constructing, installing or renting real property or tangible personal property having an expected useful life of more than one (1) year, municipalities and counties may incur short-term financing obligations maturing over a period of, or having a term, not to exceed five (5) years. Such obligations may bear interest at either:

“(1) a fixed rate throughout the term thereof, including a fixed interest rate which is to be determined by reference to an index or other formula, but not to exceed the maximum lawful rate of interest for fixed rate obligations, or

“(2) a rate which may vary at such times and under such circumstances as the parties may agree, whether or not the interest rate in fact varies, but not to exceed the maximum lawful rate of interest for variable rate obligations. The maximum lawful rate of interest for fixed rate obligations is the formula rate in effect on the date the obligation is incurred, regardless of when such interest is to begin to accrue. The maximum lawful rate of interest for variable rate obligations is the formula rate in effect on the date such interest accrues. The aggregate principal amount of short-term financing obligations incurred by a municipality or a county pursuant to this section shall not exceed five percent (5%) of the assessed value of taxable property located within the municipality or two and one half percent (2.5%) of the assessed value of taxable property located within the county, as determined by the last tax assessment completed before the last obligation was incurred by the city or county. The total annual principal and interest payments in each fiscal year on all outstanding obligations of a municipality or a county pursuant to this section shall be charged against and paid from the general revenues for such fiscal year, which may include road fund revenues. Tax revenues earmarked for solid waste disposal purposes may be used to pay printing and other costs associated with bonds issued under this amendment for solid waste disposal purposes.

“(b) As used here:

“(1) ‘Short-term financing obligation’

means a debt, a note, an installment purchase agreement, a lease, a lease-purchase contract, or any other similar agreement, whether secured or unsecured; provided, that the obligation shall mature over a period of, or have a term, not to exceed five (5) years;

“(2) ‘Formula rate’ means that rate of interest which is five percentage points (5%) above the equivalent bond yield of one year United States Treasury Bills offered by the United States Treasury at the last auction during the immediately preceding calendar quarter, calculated by rounding up to the nearest one-fourth of one percentage point (0.25%) (unless the equivalent bond yield is already by a multiple of one-fourth of one percentage point), and announced by the State Bank Commissioner (or such successor official who may be performing substantially the same duties) from information available from the Federal Reserve System of the United States. The calculation of the formula rate shall be made on or before the tenth (10th) day of each calendar quarter. The formula rate so calculated shall be effective on the eleventh (11th) day of the calendar quarter and shall continue in effect until the formula rate for the succeeding calendar quarter shall have been calculated and becomes effective. If, for any reason, the United States ceases to issue one year Treasury Bills, such calculation shall be made using a debt instrument of the United States having substantially the same general character and maturity. The calculation and announcement of the formula rate by the State Bank Commissioner shall be final.

“(c) The provisions of this section shall be self-executing.”

This section is being set out to correct an omission from the 2011 supplement.

AMEND. 79. [PROPERTY TAX RELIEF].**CASE NOTES****ANALYSIS**

Assessment Value.

Substantial Improvements.

Assessment Value.

Tax assessor did not err in disregarding a freeze and assessing a taxpayer's property at a higher amount based on a change in "location factor" because pursuant to § 26-34-101(b), changes in assessment were valued as of the first Monday in January of the year in which the changes are made, so the assessment value that the taxpayer was notified of in July 2005 was effective as of January 3, 2005, prior to his sixty-fifth birthday. *Curry v. Pope County Equalization Bd.*, 2011 Ark. 408, — S.W.3d — (2011).

Substantial Improvements.

Circuit court did not err in finding that improvements made to a taxpayer's property prior to his sixty-fifth birthday were "substantial improvements" within the meaning of section 1 of this amendment because the definition of "substantial improvements" under Assessment Coordination Department Rules, 177-01-001 Ark. Code R. 4.08.1, included renovation, reconstruction, and refurbishment such as that done by the taxpayer; whether improvements constituted a twenty-five percent increase in value is not definitive of whether the improvements were substantial. *Curry v. Pope County Equalization Bd.*, 2011 Ark. 408, — S.W.3d — (2011).

AMEND. 80. [QUALIFICATIONS OF JUSTICES AND JUDGES].**CASE NOTES****ANALYSIS**

Bypassing Rules of Pleading, Practice, and Procedure.

Jurisdiction.

Malpractice Proceedings.

Res Judicata.

Bypassing Rules of Pleading, Practice, and Procedure.

Petition to revive a foreign judgment was properly granted because it was authenticated under Ark. R. Civ. P. 44 where it was signed by a clerk for a United States Bankruptcy Court; the Arkansas Supreme Court's rule-making authority over procedural matters was exclusive. It was argued that the proper authentication process was not followed when a certified copy of the judgment was attached to an application. *Bird v. Shaffer*, 2012 Ark. App. 464, — S.W.3d — (2012).

Jurisdiction.

Arkansas Department of Human Services (DHS) was not entitled to certiorari relief in a dependency-neglect proceeding because the circuit court was within its exclusive jurisdiction under § 6 of this amendment to act to protect the integrity of the proceeding and to safeguard the

rights of the litigants before it when it ordered DHS to correct problems that were preventing work and services. *Ark. Dep't of Human Servs. v. Shelby*, 2012 Ark. 54, — S.W.3d — (2012).

In a case where appellant contended that an order of protection did not comport with the requirements of the law because it was issued after a hearing without appellant receiving actual notice or an opportunity to participate therein, the revocation of probation based on the commission of a felony was appropriate because appellant violated the protective order under § 5-53-134; by pleading guilty, appellant admitted that he knew the order existed, an element of the crime, and that he knowingly violated it. Appellant did not seek to appeal the order of protection, he did not raise a lack of notice before entering his guilty plea, and he did not appeal the judgment following the plea in that case; moreover, the circuit court had jurisdiction over any criminal act within its borders, and appellant admitted to committing the criminal act of violating the protective order. *Standridge v. State*, 2012 Ark. App. 563, — S.W.3d — (2012).

Malpractice Proceedings.

Because the language, "By means of expert testimony provided only by a medical care provider of the same specialty as the defendant" in § 16-114-206(a) adds requirements to Ark. R. Evid. 702, attempts to dictate procedure, and invades the province of the judiciary's authority to set and control procedure, it violates the separation-of-powers doctrine in § 3 of this amendment, and the inherent authority of the courts to protect the integrity of proceedings and the rights of the litigants. *Broussard v. St. Edward Mercy Health Sys.*, 2012 Ark. 14, — S.W.3d — (2012).

Res Judicata.

Trial court erred in awarding a law firm an attorney's fee of \$11,902.47 as the

claim was barred by res judicata as: (1) in a first suit, the firm was denied relief for breach of contract and quantum meruit; (2) this amendment granted the trial court jurisdiction to rule on all claims of relief, legal and equitable; (3) jurisdiction was proper in the first suit under § 28-1-104, and the first suit fully and finally settled all issues between the firm and the clients; and (4) both suits involved the same parties, and the same claims. *Hooten v. Mobley Law Firm, P.A.*, 2011 Ark. App. 778, — S.W.3d — (2011).

§ 3. Rules of pleading, practice, and procedure.**CASE NOTES****Province of the Supreme Court.**

Section 9-27-318, which vested prosecutors with the discretion to bring felony charges against 16-year-olds in the criminal divisions of circuit courts, was substantive law and not a rule of pleading, practice, and procedure; therefore, it did not violate separation of powers under Ark. Const. Art. 4, §§ 1, 2. Also, § 9-27-318(c) did not deny a juvenile equal pro-

tection of the law because treatment as a juvenile was not an inherent right and could be modified by the legislature. *C.B. v. State*, 2012 Ark. 220, — S.W.3d — (2012).

Cited: *Nelson v. State*, 2011 Ark. 429, — S.W.3d — (2011); *Proassurance Indem. Co. v. Metheny*, 2012 Ark. 461, — S.W.3d —, 2012 Ark. LEXIS 499 (Dec. 13, 2012).

§ 6. Circuit courts.**CASE NOTES****ANALYSIS**

Jurisdiction.

Jury Trial.

Jurisdiction.

Circuit court had jurisdiction under subsection (a) of this section, because the subject matter of the underlying dispute prior to the complaint's amendment was breach of contract. *Peterson v. Davis*, 2012 Ark. App. 166, — S.W.3d — (2012).

Circuit court had jurisdiction to hear the case even though it concerned child-custody law and was outside the subject of proceedings in the juvenile division, because the designation of divisions was for the purpose of judicial administration and not for the purpose of subject matter jurisdiction, and the creation of divisions

would in no way limit the powers and duties of the judges to hear all matters within the jurisdiction of the circuit court; once the juvenile division of the circuit court ordered that the child be placed in the permanent custody of the third parties, the child was no longer dependent-neglected and she came into dependency-neglect proceedings due to parental neglect and parental unfitness. *Young v. Ark. Dep't of Human Servs.*, 2012 Ark. 334, — S.W.3d — (2012).

Jury Trial.

Circuit court erred in submitting a bank's foreclosure and fraudulent-transfer claims to the jury, as these claims historically had been submitted to a trial judge in equitable proceedings. *Nat'l*

Bank of Ark. v. River Crossing Partners, LLC, 2011 Ark. 475, — S.W.3d — (2011).

AMEND. 89. [GOVERNMENTAL BONDS AND LOANS — INTEREST RATES — ENERGY EFFICIENCY PROJECTS (CONST. ART. 19, § 13 REPEALED, CONST. AMEND. 30, § 5, AMEND. 38, § 5, AMEND. 62, § 1, AMEND. 65, § 4, AND AMEND. 78, § 2 AMENDED)].

CASE NOTES

ANALYSIS
Ballot Title.
Requirement of Separate Vote.

Ballot Title.
Ballot title for a proposed constitutional amendment, now codified as this amendment, complied with Ark. Const. Art. 19, § 22 in that it identified and distinguished the amendment and was not worded in some way as to constitute a manifest fraud upon the public. Forrester v. Martin, 2011 Ark. 277, — S.W.3d — (2011).
In the case of proposed constitutional amendment, now codified as this amend-

ment, § 7-9-204, was at variance with Ark. Const. Art. 19, § 22, and violated the Arkansas Constitution. Forrester v. Martin, 2011 Ark. 277, — S.W.3d — (2011).

Requirement of Separate Vote.
This amendment, which concerned public and private debt obligation, did not violate the separate-issue requirement under Ark. Const. Art. 19, § 22 because each relevant section related to the general subject of the amendment and was reasonably germane to the other sections. Forrester v. Martin, 2011 Ark. 277, — S.W.3d — (2011).

§ 12. [Applicability]

CASE NOTES

Applicability.
Federal law did not exempt the contract between the parties from Arkansas usury law, because the contract for deed in the instant case did not satisfy any of the elements of the definition of “loan, mortgage, credit sale, or advance,” and the

sellers did not qualify as a lender covered under the Depository Institutions Deregulation and Monetary Control Act of 1980; the contract was signed and dated on August 25, 2002. Mercer v. Engle, 2012 Ark. App. 277, — S.W.3d — (2012).

AMEND. 91. [GENERAL OBLIGATION FOUR-LANE HIGHWAY CONSTRUCTION AND IMPROVEMENT BONDS].

SECTION 1. Intent.
The people of the State of Arkansas find that:
(a) The state has an outdated and inadequate system of highway funding that is unable to meet the severe and pressing needs to maintain and improve the state’s system of state highways, county roads, and city streets;
(b) Increasing investment in the state highway system, county roads, and city streets will create jobs, aid in economic development, improve quality of life, and provide additional transportation infrastructure, including specifically, a four-lane highway construction plan designed

to connect all regions of the state; and

(c) To provide additional funding for the state's four-lane highway system, county roads, and city streets, this amendment levies a temporary sales and use tax and authorizes general obligation highway construction and improvement bonds for the state's four-lane highway system.

SECTION 2. Definitions.

As used in this amendment:

(a) "Bonds" means the State of Arkansas General Obligation Four-Lane Highway Construction and Improvement Bonds as authorized in this amendment;

(b) "Chairman" means the chair of the Arkansas Highway Commission;

(c) "Chief fiscal officer" means the Director of the Department of Finance and Administration;

(d) "Commission" means the State Highway Commission;

(e) "Debt service" means all amounts required for the payment of principal of, interest on, and premium, if any, due with respect to the bonds in any fiscal year, along with all associated costs, including without limitation the fees and costs of paying agents and trustees, and remarketing agent fees;

(f) "Designated tax revenues" means:

(1) Taxes collected under this amendment and apportioned to the Arkansas State Highway and Transportation Department Fund under § 27-70-206 collected over an approximate ten-year period; and

(2) Other fees or taxes that are dedicated to the repayment of the bonds; and

(g)(1) "Four-lane highway improvements" means construction of and improvements to:

(A) Four-lane roadways;

(B) Bridges;

(C) Tunnels;

(D) Engineering;

(E) Rights-of-way; and

(F) Other related capital improvements and facilities appurtenant or pertaining thereto, including costs of rights-of-way acquisition and utility adjustments.

(2) "Four-lane highway improvements" also means the maintenance of four-lane highway improvements constructed with proceeds of the bonds.

SECTION 3. Levy of Temporary Tax.(a)(1) Except for food and food ingredients, a temporary additional excise tax of one-half percent (0.5%) is levied on all taxable sales of property and services subject to

the tax levied by the Arkansas Gross Receipts Act of 1941.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting and payment of all other Arkansas gross receipts taxes.

(b)(1) Except for food and food ingredients, a temporary additional excise tax of one-half percent (0.5%) is levied on all tangible personal property and services subject to the tax levied by the Arkansas Compensating Tax Act of 1949.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting and payment of Arkansas compensating taxes.

SECTION 4. Authorization and purpose.

(a) The State Highway Commission may issue State of Arkansas Four-Lane Highway Construction and Improvement General Obligation Bonds ('bonds') in a total principal amount not to exceed one billion, three hundred million dollars (\$1,300,000,000) for the purpose of:

(1) Accelerating four-lane highway improvements in progress or scheduled as of January 1, 2011;

(2) Funding new four-lane highway improvements not in progress or scheduled as of January 1, 2011;

(3) Providing matching funds in connection with federal highway programs for four-lane highway improvements; and

(4) Paying the costs of issuance of the bonds.

(b) The bonds may be issued in one (1) or more series at times, in amounts, and bearing the designations as the commission in consultation with the chief fiscal officer determines.

(c)(1) The bonds shall be general obligations of the State of Arkansas, secured by and payable from the general revenues of the state as set forth in Section 15 of this amendment.

(2) The bonds shall be payable first from the following designated revenues:

(A) Portion of the proceeds of the additional one-half of percent (0.5%) excise tax on gross proceeds or gross receipts; and

(B) Portion of the proceeds of the additional one-half percent (0.5%) compensating excise tax; and

(C) Other revenues designated by the General Assembly for this purpose.

(d)(1) If the amendment is approved, the sales tax and the use tax will be collected over an approximate ten-year period, and so long as the bonds are outstanding.

(2) The sales and use tax shall terminate upon payment in full of the bonds.

(3) If the amendment is not approved, the sales and use taxes shall

not be levied and collected.

SECTION 5. Use of proceeds.(a) There is established on the books of the Treasurer of State, Auditor of State, and the chief fiscal officer of the State a special account within the State Highway and Transportation Department Fund to be designated as the Arkansas Four-Lane Highway Construction and Improvement Bond Account.

(b)(1) On the last day of each month, the Treasurer of State, after making the deductions required from the net special revenues as set out in § 19-5-203(b)(1), shall transfer the revenues derived by the one-half cent (0.5¢) taxes levied under this amendment to the State Highway and Transportation Department Fund, the County Aid Fund and the Municipal Aid Fund in the percentages provided in the Arkansas Highway Revenue Distribution Law, § 27-70-201 and § 27-70-206.

(2) The proceeds of the excise taxes transferred to the State Highway and Transportation Department Fund shall be set aside and transferred to the Arkansas Four-Lane Highway Construction and Improvement Bond Account and used for the purposes provided for in this amendment.

(3) The tax revenues accruing from this amendment shall not be designated as special revenues for deposit to the Arkansas Department of Aeronautics Fund under § 27-115-110.

SECTION 6. The Arkansas Highway Revenue Distribution Law, which defines highway revenues, shall include taxes levied and collected by this amendment.

SECTION 7. Effective Date.

(a) The taxes levied by this amendment shall not become effective until after a majority of the qualified electors of the state voting on the question approve the issuance of Four-Lane Highway Construction and Improvement General Obligation Bonds to be repaid in part by the taxes levied by this amendment and deposited to the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund.

(b) If the tax levies and the issuance of the bonds are approved, the effective date of the temporary taxes levied by this amendment shall be July 1, 2013.

SECTION 8. Termination of tax.

(a) If bonds are issued under this amendment, the temporary taxes levied under this amendment shall be abolished when there are no bonds outstanding to which tax collections are pledged as provided in this amendment.

(b)(1) To provide for the accomplishment of the administrative duties of the chief fiscal officer and to protect the owners of the bonds, the tax hall be abolished on the first day of the calendar month after the

expiration of thirty (30) days from the date a written statement identifying the tax and the bonds is signed by the chairman and by the trustee for the bondholders, if a trustee is serving in this capacity, and is filed with the chief fiscal officer.

(2) The written statement shall certify that:

(A) The trustee has or will have sufficient funds set aside to pay the principal of and interest on the bonds when due at maturity or at redemption prior to maturity, and the chairman certifies that the tax is not pledged to any other highway bonds; or

(B) There are no longer any bonds outstanding payable from tax collections.

(c) The Department of Finance and Administration shall continue to collect taxes levied under this section during the time the tax levies were in force but unpaid and remit the tax collections under the Arkansas Highway Revenue Distribution Law.

SECTION 9.(a) The General Assembly shall provide for the proper administration and enforcement of this amendment by law.

(b) Unless the General Assembly provides another procedure by law, the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall apply to the taxes levied under this amendment and to the reporting, remitting, and enforcement of the tax.

SECTION 10. Procedure for issuing bonds

Before any series of bonds may be issued:

(1)(A) The commission shall, in consultation with the chief fiscal officer, determine the estimated amount of designated tax revenues to be collected by the state in the remainder of the then current fiscal biennium.

(B) The estimated amount of designated tax revenues shall be reported to the commission and Governor;

(2) The commission shall present a report to the Governor that includes the:

(A) Highway construction and improvements to be financed with the proceeds of such series of bonds;

(B) Estimated cost of the four-lane highway construction and improvements;

(C) Amount of bonds necessary to finance such four-lane highway construction and improvements; and

(D) Estimated amount of debt service required to pay the bonds;

(3) Upon receipt of the report required under subdivision (2) of this section, the Governor shall, if he and the Commission determine that the estimated designated tax revenues and any other revenues appropriated by the General Assembly for repayment of bonds will be sufficient to pay the debt service on the series of bonds, by proclamation authorize the commission to proceed with the issuance of such series of

bonds.

(4)(A) After the Governor has issued his or her proclamation with respect to one (1) or more series of bonds, the commission shall adopt a resolution authorizing the issuance of the bonds.

(B) Each such resolution shall contain the terms, covenants, and conditions as are desirable and consistent with this amendment, including without limitation the:

(i) Establishment and maintenance of funds and accounts;

(ii) Deposit and investment of tax collections and of bond proceeds; and

(iii) Rights and obligations of the state, its officers and officials, the commission, and the registered owners of the bonds.

(C)(i) Each such resolution of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures, with one (1) or more banks or trust companies located within or outside the state, containing any of the terms, covenants, and conditions provided for in this section and other terms and conditions deemed necessary by the commission.

(ii) The trust indenture or trust indentures shall be binding upon the commission, the state, and their respective officers and officials.

SECTION 11. Terms of bonds.

(a)(1) The bonds shall be issued in series as provided for in this section in amounts sufficient to finance all or part of the costs of four-lane highway construction and improvements provided under Section 10 of this amendment.

(2) Each series shall be designated by the year in which the series was issued, and if more than one (1) series is issued in a particular year then by alphabetical designation.

(b) The bonds of each series shall have the date or dates the commission determines and shall mature, or be subject to mandatory sinking fund redemption, over a period ending not later than ten (10) years after the date of implementation of the temporary sales and use tax.

(c)(1) The bonds of each series shall bear interest at the rate or rates determined by the commission at the sale of the bonds.

(2)(A) The bonds may bear interest at either a fixed or a variable rate.

(B) The interest may be taxable or tax-exempt or may be convertible from one (1) interest rate mode to another.

(C) The interest shall be payable at a time determined by the commission

(d) The bonds:

(1) Shall be issued in the form of bonds registered as to both principal and interest without coupons;

- (2) May be in such denominations;
- (3) May be made exchangeable for bonds of another form or denomination, bearing the same rate of interest;
- (4) May be made payable at places within or outside the state;
- (5) May be made subject to redemption prior to maturity in such manner and for such redemption prices; and
- (6) May contain other terms and conditions established by the commission.

(e)(1) Each bond shall be executed with the facsimile signatures of the Governor, the chairman, and the Treasurer of the State, and shall have affixed or imprinted on the bond the seal of the State of Arkansas.

(2) Delivery of the executed bonds shall be valid, notwithstanding any change in persons holding the offices occurring after the bonds have been executed.

SECTION 12. Sale of bonds.

(a)(1) The bonds may be sold at a private sale or public sale and at terms as the commission determines to be reasonable and expedient.

(2) The bonds may be sold at a price acceptable to the commission, and the price may include a discount or a premium.

(b)(1) If the bonds are sold at a public sale, the commission shall provide notice of the offering of the bonds in a manner reasonably designed to notify the public finance industry that the offering is being made.

(2) The commission shall set the terms and conditions of bidding, including the basis on which the winning bid will be selected.

(c)(1) The commission may structure the sale of bonds utilizing financing techniques that are recommended by its professional advisors to take advantage of market conditions and obtain the most favorable interest rates consistent with the purposes of this amendment.

(2) The commission may enter into ancillary agreements in connection with the sale of the bonds as necessary and advisable, including without limitation bond purchase agreements, remarketing agreements, letter of credit and reimbursement agreements, and bond insurance agreements.

SECTION 13. Employment of professionals.

The commission may retain professionals it determines are necessary to issue and sell the bonds, including without limitation legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

SECTION 14. investment of proceeds.

Prior to expenditure of the proceeds from the issuance of the bonds, the proceeds from the issuance of the bonds shall be held, maintained,

and invested by the trustee as provided in a resolution of the commission or as provided in a trust indenture securing the bonds.

SECTION 15. General obligation.

(a)(1) The bonds issued under this amendment shall be direct general obligations of the State of Arkansas for the payment of the debt service on which the full faith and credit of the State of Arkansas is irrevocably pledged as long as the bonds are outstanding.

(2) The bonds shall be payable from:

(A) The Arkansas Four-Lane Highway Construction and Improvement Bond Account; and

(B) General revenues of the state as that term is defined in the Revenue Stabilization Law, § 19-5-101 et seq.

(3) As necessary, the amount of general revenues is pledged to the payment of debt service on the bonds and shall be and remain pledged for these purposes.

(b)(1) This amendment shall constitute a contract between the State of Arkansas and the registered owners of all bonds issued under this amendment which shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, may be enjoined by the Circuit Court of Pulaski County upon the complaint of a bond owner or a taxpayer.

(2) The court shall, in any suit against the commission, the Treasurer of State, or other officer or official of the state prevent a diversion of any funds pledged under this amendment and shall compel the restoration of diverted funds, by injunction or mandamus.

(3) Without limitation as to any other appropriate remedy at law or in equity, a bond owner may, by an appropriate action, including without limitation injunction or mandamus, compel the performance of all covenants and obligations of the state, its officers, and officials.

(c) This amendment shall not create a right of any character with respect to the bonds, and a right of any character with respect to the bonds shall not arise under the amendment, unless the first series of bonds authorized by this amendment has been sold and delivered.

SECTION 16. Sources of repayment.(a) Without in any way limiting the general obligation of the state to repay the bonds, the designated tax revenues are pledged to the payment of the debt service on the bonds.

(b)(1) The Treasurer of State shall establish in the State Highway and Transportation Department a special account known as the Arkansas Four-Lane Highway Construction and Improvement Bond Account.

(2) The Treasurer of State shall deposit in the Arkansas Four-Lane Highway Construction and Improvement Bond Account all designated tax revenues.

(3) The commission may pledge to the repayment of the bonds the full faith and credit of the state and may grant a lien upon the funds on deposit in the Arkansas Four-Lane Highway Construction and Improvement Bond Account.

(c)(1) On or before commencement of each fiscal year, the commission in consultation with the chief fiscal officer shall determine the estimated amount required for payment of debt service due on each series of bonds issued and outstanding under this amendment during the fiscal year and shall certify the estimated amount to the Treasurer of State.

(2) The Treasurer of State shall then make transfers from the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund to the trustees of each series of bonds, in such amounts and at such times as shall be specified in the indentures, to:

(A) Pay the maturing debt service on each series of bonds issued and outstanding under this amendment; and

(B) Establish and maintain with the trustee for each series of bonds a reserve or reserves for payment of debt service on each series of bonds.

(d) The obligation to make transfers from the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund for the payment of debt service on, and, if applicable, a reserve for, each series of bonds is a first charge against amounts on deposit.

(e) Funds on deposit in the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund that are in excess of the obligations set forth in (d) above may be used to:

(1) Redeem bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity as set forth in the trust indentures authorizing or securing each series of bonds; or

(2) Fund additional four-lane highway construction and improvements in the manner and in accordance with the provisions set forth in the trust indentures authorizing or securing each series of bonds.

(f) If there are insufficient amounts in the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund to pay the debt service on bonds issued and outstanding under this amendment or to fund any necessary reserves at the required level, the State Treasurer shall transfer additional amounts to the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund from the general revenues of the

State.

SECTION 17. Investment of revenues.(a) Moneys held in the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund and any fund in the State Treasury created under this amendment shall be invested by the State Board of Finance to the full extent practicable pending disbursement for the purposes intended.

(b) Notwithstanding any other provision of law, the investments and disbursements shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which the fund appertains to the extent the terms of the resolution or trust indenture are applicable.

SECTION 18. Refunding bonds.(a) The commission may issue bonds for the purpose of refunding bonds previously issued under this amendment if the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized by this amendment, and the final maturity of such refunding bonds shall not exceed ten (10) years from the date of implementation of the tax.

(b) The refunding bonds shall be general obligations of the State of Arkansas and shall be secured and sold in accordance with the provisions of this amendment.

SECTION 19. Tax Exemption.

(a)(1) All bonds issued under this amendment and interest on the bonds shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.

(2) Profits from the sale of the bonds shall also be exempt from income taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

SECTION 20. State Aid Street Fund.(a) Upon the adoption of this amendment, the Department of Finance and Administration shall:

(1) Deposit a total of one cent (1¢) per gallon from revenues distributed under the Arkansas Highway Revenue Distribution Law from the proceeds derived from existing motor fuel taxes and distillate fuel taxes; and

(2) Permanently dedicate the revenues to the State Aid Street Fund created under § 27-72-407.

(b) The State Aid Street Funds shall aid city streets under the law.

SECTION 21. Powers of the commission.

(a) All powers granted to the commission under this amendment shall be in addition to the powers as already exist under Amendment 42 to the Arkansas Constitution and the laws of the State of Arkansas.

(b) A member of the commission or other state official shall not be

liable personally for any reason arising from the issuance of bonds under this amendment unless the person acts with corrupt intent.

SECTION 22. Form of submission to the electors.

The proposition set forth shall be submitted for approval or rejection by the electors in substantially the following form:

“A TEMPORARY ONE-HALF PERCENT (0.5%) SALES AND USE TAX FOR STATE HIGHWAYS AND BRIDGES, COUNTY ROADS, BRIDGES AND OTHER SURFACE TRANSPORTATION, AND CITY STREETS, BRIDGES AND OTHER SURFACE TRANSPORTATION, WITH THE STATE'S PORTION TO SECURE STATE OF ARKANSAS GENERAL OBLIGATION FOUR-LANE HIGHWAY CONSTRUCTION AND IMPROVEMENT BONDS AND PERMANENTLY DEDICATING ONE CENT (1¢) PER GALLON OF THE PROCEEDS DERIVED FROM THE EXISTING MOTOR FUEL AND DISTILLATE FUEL TAXES TO THE STATE AID STREET FUND”

On each ballot there shall be printed the following:

“FOR a proposed constitutional amendment to levy a temporary sales and use tax of one-half percent (0.5%) for state highways and bridges, county roads, bridges and other surface transportation, and city streets, bridges and other surface transportation, with the state's portion to secure State of Arkansas General Obligation Four-Lane Highway Construction and Improvement Bonds in the total principal amount not to exceed \$1,300,000,000 for the purpose of constructing and improving four-lane highways in the State of Arkansas, prescribing the terms and conditions for the issuance of such bonds which will mature and be paid in full in approximately ten (10) years, which payment in full shall terminate the temporary sales and use tax, describing the sources of repayment of the bonds and permanently dedicating one cent (1¢) per gallon of the proceeds derived from the existing motor fuel and distillate fuel taxes to the State Aid Street Fund.”

“AGAINST a proposed constitutional amendment to levy a temporary sales and use tax of one-half percent (0.5%) for state highways and bridges, county roads, bridges and other surface transportation, and city streets, bridges and other surface transportation, with the state's portion to secure State of Arkansas General Obligation Four-Lane Highway Construction and Improvement Bonds in the total principal amount not to exceed \$1,300,000,000 for the purpose of constructing and improving four-lane highways in the State of Arkansas, prescribing the terms and conditions for the issuance of such bonds which will mature and be paid in full in approximately ten (10) years, which payment in full shall terminate the temporary sales and use tax, describing the sources of repayment of the bonds and permanently dedicating one cent (1¢) per gallon of the proceeds derived from the existing motor fuel and distillate fuel taxes to the State Aid Street Fund.”

Publisher's Notes. The bracketed heading was added by the Publisher. H.J.R. 1001 and was adopted at the 2012 general election by a vote of 597,215 for and 428,745 against.

ACTS DISPOSITION TABLE

This table supplements the Acts Disposition Table for Tables Volume B in the 2011 supplement for sessions from 1968 through the 2012 Fiscal Session.

The abbreviation "R" followed by an act year and number in the column headed "A.C.A." indicates that that act has repealed the act and/or act section identified in the "Act No." and "Section" columns.

For an explanation of other abbreviations, and for other information about the tables, please consult page 1 of the bound volume.

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